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# **Colonial Legal Institutions and their Impact Upon Indigenous Practices in Bengal, 1860-1914**

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## Declaration

I confirm that this thesis is entirely of my own composition and represents my own original research. The work has not been submitted for any other degree or professional qualification.

Signed:

Date:

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## Abstract

This thesis examines the impact of colonial legal institutions planted by the British administration upon the working of local indigenous practices in Bengal from 1860 to 1914. The aim of the thesis is two-fold. Firstly, the aim is to highlight the constraints and limitations faced by institutions that were reorganised following the assumption of Crown control in 1858. Secondly, the purpose is to illustrate the ways in which these limitations allowed the native population to mould, and manipulate, state institutions according to local needs and expectations.

By examining these issues the aim is to highlight the tenuous relationship between western methods and indigenous practices, at times complementing each other and at other times proving to be incompatible. Through an examination of the system of criminal administration, the thesis seeks to highlight the complexities of the interaction between the local populace and colonial law. Rather than representing rigid categories which highlighted the difference between coloniser and colonised, the system of criminal administration was often the site where boundaries would often become blurred. As the thesis will aim to demonstrate through specific scenarios and cases described both in private memoirs and official records, it was a site which would be shaped by a number of influences- from clashing interests and changing alliances amongst local groups to the conflicting objectives of the colonial rulers themselves. In the process individual agencies were asserted that confound simplistic characterisations of the impact of colonialism in this important region within the British Indian empire.

## Abbreviations

CPC.....	Criminal Code of Procedure
IOR.....	India Office Records
IPC.....	Indian Penal Code
L/PJ/5.....	Public and Judicial Records (Acts Passed)
L/PJ/6.....	Public and Judicial Records (1880-1914)
Mss Eur.....	Private Papers

## Glossary of Terms

<i>amlah</i>	head Indian officers of a judicial or revenue court
<i>bhadralok</i>	educated, middle class Bengali society
<i>chotolok</i>	lower orders
<i>chowkidar</i>	village watchman
<i>darogah</i>	sub inspector
<i>elaka</i>	area
<i>lathials</i>	groups of armed men employed by <i>zamindars</i>
<i>ma-bap</i>	mother-father
<i>mofussil</i>	interior districts
<i>panchayat</i>	village council
<i>panha</i>	ransom
<i>patwari</i>	village accountant
<i>pugree</i>	turban
<i>tehsildar</i>	revenue administrative officer
<i>thana</i>	police jurisdiction
<i>zamindar</i>	landlord

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## Chapter One: Introduction- Subalterns, Sovereigns and Networks of Control

The Government are very keen on amassing statistics- they collect them, add them, raise them to the  $n$ th power, take the cube root and prepare wonderful diagrams. But what you must never forget is that every one of those figures comes in the first instance from the *chowkidar*, who just puts in what he damn pleases.<sup>1</sup>

What the judge was keen to emphasise in his conversation with politician Harold Cox was that the rhetoric of empire was far removed from the reality of running a colonial administration in British India. Although the judge did not specifically refer to the system of criminal administration in India, the above assertion can equally be applied to any examination of the colonial framework of policing and control. Within this framework, the *chowkidar* would form an integral part, commonly referred to as the first link in the chain of criminal administration. The colonial police and the criminal courts of law would form the second and third links in the chain and would be equally responsible in the distortion of the information-gathering process that is alluded to in the above statement. Together, these three key agencies would maintain a colonial structure of control which would have to be continuously moulded to meet the demands of the state and at the same time address the more local concerns held by the Indian subjects over whom the British ruled. It would be a chain that would prove to be fragile throughout the colonial period, most visibly so during periods when British rule in India was being challenged.

A closer examination of the influences upon the *chowkidar*, the pressures which he faced at both state and local level, as well as the demands which other links in the chain of criminal administration endured alongside him, are points of enquiry

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<sup>1</sup> Sir Josiah Stamp, *Some Economic Factors in Modern Life* (London: P.S. King, 1929), pp. 258-9

that can highlight the ways in which the network of control, designed to provide the necessary facts and figures, could instead reflect a number of conflicting dilemmas and concerns.

The main purpose of this study is to explore the ambiguous relationship between the colonial administration and Indian society through an examination of archival material relating to law and policing in the province of Bengal. To be clear, the aim of the study is to examine the impact of colonial legal institutions planted by the British administration upon indigenous practices of control and punishment in Bengal from the mid-nineteenth century to the onset of the First World War in 1914. The purpose of the study is twofold: firstly, to highlight the constraints and limitations faced by colonial institutions that were reorganised following the assumption of Crown control in 1858; secondly, to illustrate the ways in which the limitations of the system allowed the local native population to mould and manipulate these institutions according to local needs and expectations. By examining these issues the aim is to examine the tenuous relationship between western methods and indigenous practices, at times complementing each other and at other times proving to be incompatible. An analysis of the ways in which the chain of criminal administration was distorted will also highlight the complexities of the interaction between the state and local groups, complexities which undermine simplistic notions of the impact of colonialism.

In the report of the Indian Police Commission of 1902-03, which considered the various defects within the Indian police force, the Lieutenant Governor of Bengal commented upon the peculiar circumstances of the province under his control. What separated Bengal from other Indian provinces, he argued, was the problem of village

government, which differed ‘materially from other parts of India.’<sup>2</sup> It was at the village level where the chain of criminal administration began, the point where information of a criminal nature was gathered and passed onto the official institutions of the state. Collaboration between the colonial authorities and leading indigenous agencies was a key aspect of this system. In provinces such as Punjab and the United Provinces there were a number of agencies, such as the *patwaris* and *tehsildars*, whose work was constantly inspected by district sub divisional officers. Due to the existence of numerous local agencies available to assist the government, and the higher level of control possessed by district magistrates in these provinces, the colonial authorities, thus, could still penetrate the interior districts of these provinces and gain access to various kinds of information.<sup>3</sup>

In Bengal, on the other hand, it was believed that the revenue system introduced following the Permanent Settlement of 1793 had led to the weakening of traditional village agencies, leaving only the all-powerful landlord and the *chowkidar* as agents upon whom the colonial government depended for the transferral of information relating to criminal cases.<sup>4</sup> The lack of alternative agencies, and the decisive influence of the *zamindar* in determining what type of information was passed onto legal institutions, ensured that the colonial authorities experienced

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<sup>2</sup> See *Indian Police Commission 1902-03 – Bengal Papers, volume 1*, p. 85

<sup>3</sup> Whilst in Bombay it was the village *patel* who was responsible for revenue and criminal matters, in Madras the Police Act XXIV of 1855 applied to both village and regular police. Elsewhere, in the North Western Provinces and Punjab, the district magistrate had tight control over the system of village watch. See *Council Proceedings for the Amendment of the Chowkidari Act (VI) of 1870 L/PJ/6/335, File 2148 (1892)*, p. 99

<sup>4</sup> The Permanent Settlement essentially set the land revenue in perpetuity, permanently fixing the amount of rent to be paid by individuals declared as landlords, who by the terms of the settlement were declared official owners of the land. Furthermore, whilst in pre-colonial society village agents were given lands as gifts, various lands were resumed following the settlement, thus altering the nature of the relationship between traditional agencies and the *zamindari* class.

greater difficulties in trying to establish a link with village communities in the interior districts of Bengal.

What followed during the period under review in this thesis was the attempt to 'readjust' traditional village agencies to meet state requirements. *Chowkidari panchayats*, designed by the colonial government to gain information of a criminal nature, were one example of a system completely alien in other provinces.<sup>5</sup> The creation of village *panchayats* formed specifically to aid and assist police work in this particular province would in turn elicit very specific types of responses from rural communities. As this thesis will demonstrate, readjusting agencies at the village level, in a manner that was alien to the local population, would ultimately determine how the chain of criminal administration operated.

The process of readjusting agencies at the village level also required the colonial authorities to justify such attempts. The concept of local self governance and the idea that reorganising village government would create responsible, legal citizens was thus heavily relied upon. But recreating agencies, of essentially introducing a system at odds with local custom, ensured that the differences between British and Indian conceptions of governance, law and justice would be brought into sharper focus in Bengal. Moreover, as this thesis will show, when the system was further readjusted by Indians themselves, and new identities formed as a result, the tensions and complexities of colonial rule were made further visible. It was in the province of Bengal where these complexities would become visible through the legal network of control. A network acknowledged by colonial authorities as differing from other

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<sup>5</sup> In Bombay one committee concluded there was no *panchayat* 'or anything like it', whilst in Madras there were '*panchayats*, but not for police functions.' p. 99

parts of British India, thus, suggests that it is the chain of criminal administration in the province of Bengal in particular that requires further examination.<sup>6</sup>

Local self governance became an increasingly prominent feature in the second decade of the twentieth century. The year 1914, at which point this study ends, marked the beginning of the First World War which resulted in a number of profound changes on a political, social and economic level. These changes placed different sorts of pressures upon the legal institutions of the colonial state. It was after the war that mass nationalism emerged, connecting elite politics with politics at the grass roots level.<sup>7</sup> Rural concerns increasingly formed a key part of the nationalist campaign, thus connecting rural and urban society more effectively than in the period before the war. Furthermore, it was after 1914 that the colonial government devolved more powers to the provincial governments. In effect, what this meant was that *panchayats* which had previously supplemented the official legal institutions of the state were now granted an increasingly official, 'legitimate' status to deal with cases of a criminal nature. This study ends at this point because the dynamics of the relationship between indigenous groups and legal institutions changed. After 1914 the acceleration of mass nationalism and the devolution of power, which granted rural powers a certain level of control over the legal apparatus of the state, were issues which altered the network of control. The complexities of such a shift require a separate, independent inquiry which falls outside the scope of this study.

This study will make use of a wide range of both official and non official sources to critically analyse the manner in which the agencies of the colonial state

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<sup>6</sup> In 1892, during a debate concerning the efficacy of *chowkidari panchayats*, one official concluded that it was wise 'other Indian provinces did not follow the step taken by Bengal to entrust village police functions to the villagers themselves.' See *Council Proceedings for the Amendment of the Chowkidari Act (VI) of 1870 L/PJ/6/335*, File 2148 (1892), p. 99

<sup>7</sup> See Srilata Chatterjee, *Congress Politics in Bengal 1919-1939* (London: Anthem Press, 2002)

operated. The material includes in particular the police administration reports, which provide a detailed account of the ways in which crime was perceived, reported and handled by the agencies associated with the criminal justice system. Other sources include the memoirs of retired police officials as well as judicial reports focusing on key issues and events that would impact upon the working of the system of criminal administration. A constant theme that runs throughout these sources is the view that despite the existence of a colonial network of policing and control, many crimes were still unrecorded. The inspector general of police for the Lower Provinces in Bengal argued that he had insufficient manpower to control a huge rural province.<sup>8</sup> This, and the ‘general apathy’ of the rural population, ensured that ‘of crimes detected by the Police, and found to be true, less than one third are solved.’<sup>9</sup>

The figures quoted in police reports suggest that the agencies of the state were ineffective and in a sense rejected by the local populace. However, the archival material also suggests that these agencies were not in actual fact absent, instead being worked in ways which would always undermine crime reporting methods. Indeed, as a whole, the archival material charts the dilemmas which arose from the moment that a crime was committed to the point at which it came to the attention of the *chowkidar*. The *chowkidar* was the first link in the system of criminal administration and a key agent in deciding whether the case should be passed on to the other institutions of the state. How and under what circumstances criminal cases made their way through the criminal justice system, the manner in which they were

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<sup>8</sup> Only 20000 police officers, the inspector general argued, were entrusted with the duty of protecting the lives and property of more than forty million people living in scattered hamlets and homesteads spread over an area of 73000 square miles. See *Police Administration Report for the Lower Provinces of Bengal for the Year 1914*

<sup>9</sup> It was also stated that only one in 700 persons was reported to have suffered an offence against their property. One in 7000 was reported to have suffered an offence against their person in the Lower Provinces of Bengal. See *Ibid.*

handled, and the contradictions and conflicting demands that bore heavily on the police and the courts of law in that process, are all issues that are visible within these various sources.

The following chapter will examine the differences between British and Indian perceptions of crime, law and policing, perceptions which would have a direct impact upon how the legal institutions of the state were viewed and employed by the indigenous population. Chapter three will focus upon the first link in the chain of criminal administration, the *chowkidar*. He was not in fact an agent of the official network of the state. Yet the state would make concerted efforts from the mid-nineteenth century onwards to try and ensure that he resembled an official agent, doing the official work of the government without removing him from the local environment. The conflict which this would create between the state and the local agencies that fell outside the official network of the state, local agencies that heavily influenced the actions of the *chowkidar*, forms the focus of chapter three. Chapter four focuses upon the constraints and dilemmas faced by the police, having to serve their colonial masters whilst adjusting to the requirements of the local population whom they were supposed to protect. Chapter five focuses upon the final link in the chain, the British court, addressing why, and exactly when, the local population made use of this institution. The study will conclude by stressing the flexibility of the colonial network, which would allow various groups, including agents of the state, to subvert broader imperial agendas and adapt colonial legal institutions to the circumstances of the locality. This study will, however, first of all, begin by examining the existing historiography concerning law and policing in British India, which will be discussed in the remainder of this chapter.



## 1.1 Law, Policing and the Metropole

Policing, and the establishment of a network of surveillance and control, was a crucial component of the colonial administration and central to the expansion of the British Empire. It was a system of control which developed according to the needs of the colonial rulers and reflected ambitions that differed markedly from indigenous systems in pre-colonial India. It was also influenced by changes within the metropole itself and this is a topic which has been researched extensively.

The development of crime in English society, the changing attitudes towards it and the institutions created to contain it, have been examined by various scholars from different disciplines. Whilst sociologists such as Robert Nye and David Garland have argued that it is not crime itself but how crime is perceived which ultimately influences institutional and public responses to it,<sup>10</sup> various historians have considered the shifts in thoughts and perceptions of what crime was seen to be since the eighteenth century. Many have critically examined the transformation of the legal system amidst the huge political, social and economic changes that resulted from industrialisation in the nineteenth century.

David Taylor, in his examination of the growth of the criminal justice system in England, has noted that eighteenth-century English society was one in which ‘courts operated in a highly personalised manner...crime as an abstract concept was rarely discussed and the criminal, though a problem, was seen as a sinful figure but not a major threat to the stability of society.’<sup>11</sup> From the middle of the eighteenth century, urbanisation and commercialisation profoundly changed the economic,

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<sup>10</sup> See Robert Nye, ‘Crime in Modern Societies: Some Research Strategies for Historians’ in *Journal of Social History*, volume II (1978) and David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Oxford University Press, 1990)

<sup>11</sup> David Taylor, *Crime, Policing and Punishment in England 1750-1914* (London: Palgrave Macmillan, 1998), p. 2

social and political landscape of England and, argues Taylor, ‘a distinctive disciplinary state would develop...the growth and evolution of the criminal justice system was a central aspect of state formation.’<sup>12</sup> In particular the emergence of a ‘criminal class’, composed largely of those belonging to the indigent sections of society, has been extensively examined.<sup>13</sup> What these studies emphasise is that the construction of the ‘criminal’ was very much dependent upon the moral and social panics which defined Victorian society and, indeed, upon the varying definitions of crime and criminals which existed between different social classes. Indian society was itself subjected to profound changes during the colonial period, and the following section will discuss the change from pre-colonial society to British governance.

## 1.2 Indigenous Practices and British Sovereignty

Systems of governance in pre-colonial India have been subjected to much scholarly analysis. In pre-colonial village society, Basudeb Chattopadhyay has noted that the ‘maintenance of law and order and the administration of justice were the responsibility of the zamindars.’<sup>14</sup> In a similar vein, Sandra Freitag has argued that perceptions of authority in pre-colonial India centred around a hierarchical system in which ‘each social unit had its locus of moral authority. Whilst they owed symbolic obedience to outside power holders, they wanted their own interests to be protected and no interference in their value system, a demand that power holders accepted as

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<sup>12</sup> Ibid, p. 1. See also Clive Emsley, *Policing and its context 1750-1870* (London: Macmillan, 1983)

<sup>13</sup> See J.J. Tobias, *Crime and Industrial Society in the Nineteenth Century* (London: B.T. Batsford, 1967), Douglas Hay, ‘Crime and Justice in Eighteenth and Nineteenth Century England’ in *Crime and Justice*, volume II, (1980), pp. 45-84 and David Taylor, *Crime, Policing and Punishment in England 1750-1914*

<sup>14</sup> Basudeb Chattopadhyay, *Crime and Control in Early Colonial Bengal: 1770-1860* (Calcutta: K.P. Bagchi & Co, 2000), p.19

long as their own demands were met.<sup>15</sup> Martine Van Woerkens has further stated that according to ancient Indian literature, kings and thieves were similar in the sense that they ‘used and misused power. There was no difference between the army of a prince and the gang of a robber as they were driving the imperial trade and the work of the emperor.’<sup>16</sup> Jacques Pouchepadass has also noted that Indian society had an ‘inclusive, holistic character which absorbed the norms of these deviant groups and gave them a place albeit one at the bottom of the social hierarchy.’<sup>17</sup>

The changes within the criminal justice system in the metropole had a profound impact upon how the British viewed the Indian colony. The organisation of a fluid indigenous hierarchy in pre-colonial India was at odds with British visions of how law and order should be established in the colony. It was a vision influenced by a number of interests. Ranjan Chakrabarti and Basudeb Chattopadhyay have noted in their respective studies that the capitalist ambitions at the end of the eighteenth century required a new form of policing.<sup>18</sup> This would ensure the security of revenue, which, as a result, in 1793 led to zamindars being stripped of their policing powers and a separate police force being created under the control of local magistrates. The subsequent division of each district into police jurisdictions, each under the control of a *darogah* and the establishment of police officers paid by the government, would coincide with the desire to establish a new form of colonial authority. Power was regarded as an exclusive right belonging to the state including, argues Ranjan Chakrabarti, the right to hold a monopoly over the instruments of coercion, which

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<sup>15</sup> Sandra Freitag, ‘Collective Crime and Authority in North India’ in Anand Yang (ed.), *Crime and Criminality in British India* (Arizona: The University of Arizona Press, 1985), p. 142

<sup>16</sup> Martine Van Woerkens, *The Strangled Traveller: Colonial Imaginings on the Thugs of India* (Chicago: University of Chicago, 2002), p. 18

<sup>17</sup> *Ibid*, p. 20

<sup>18</sup> See Basudeb Chattopadhyay, *Crime and Control in Early Colonial Bengal 1770-1860* and Ranjan Chakrabarti, *Authority and Violence in Colonial Bengal: 1800-1860* (Calcutta: Bookland, 1997)

would meet the ‘political and ideological need for the British to settle the population, to hold and discipline Indian subjects within a defined space with definite categories and roles.’<sup>19</sup>

Finally, law and order was a central feature of a broader civilising mission which, Chakrabarti continues, portrayed India as a land devoid of any rule of law, with utilitarians arguing that the law would act as a tool which would ‘civilise’ the indigenous population and improve the morality of a backward Indian society.<sup>20</sup> In a similar vein, John Marriott and Bhaskar Mukhopadhyay have argued that whilst pre-colonial regimes were defined by the will of the sovereign, the British introduced a centralised, record- based form of governance which centred on, not the will of the sovereign, but the impersonal reason of the state.<sup>21</sup> It was, as Partha Chatterjee continues, a form of governance in which the extraction of surplus was not enough. What the British wanted was to justify their presence in India and the benefits their governance would bring to the colonised subjects. This led, Chatterjee continues, to a colonial project in which both direct and indirect methods, from the collection of ‘facts’ to law and medicine, were employed to validate colonial rule in India.<sup>22</sup>

The vision of an exclusive authority and broader economic interests, which crystallised at the end of the eighteenth century, led to the creation of a network of policing and control which was designed to penetrate rural society more vigorously than before. Yet, as has been noted by a number of scholars, the main aim was to control and contain those elements which threatened the exclusive authority of the

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<sup>19</sup> Ranjan Chakrabarti, *Terror, Crime and Punishment: Order and Disorder in Early Colonial Bengal 1800-1860*, (Kolkata: Readers Service, 2009), p. 268

<sup>20</sup> Ranjan Chakrabarti, *Authority and Violence in Colonial Bengal, 1800-1860*, p. 9

<sup>21</sup> John Marriott, and Bhaskar Mukhopadhyay (eds.), *Britain in India 1765-1905* (London: Pickering & Chatto, 2006), p. i

<sup>22</sup> *Ibid*, p. xxvi

colonial state. In other words, it was the ‘criminal communities’, the wandering bands and freelance soldiers created by the economic and political dislocation of the early nineteenth century, who could, as Freitag has noted, ‘form as a band to attack other parties of recruits or travellers.’<sup>23</sup> Collective criminality, Freitag argues, adhered to multiple indigenous systems of authority. The danger that this alternative indigenous system posed to the colonial network led to the creation of a detailed organisational structure, the aim of which was to emphasise the supremacy of British power over other local systems.<sup>24</sup> It was an infrastructure which enabled the government to introduce special laws and legal shortcuts to deal specifically with groups. The most famous example of this campaign against groups were the thugs of the early nineteenth century, whose ‘extermination’ depended upon carefully constructed stereotypes of native criminality, which, once verified as ‘fact’ through empirical investigation, could be dealt with using extralegal measures designed specifically to deal with the phenomenon of *thagi*. It paved the way for a whole host of groups to be dealt with in a similar manner throughout the colonial period.

The special attention given to cases of potentially threatening groups, and the special provisions put in place to control and contain these groups, meant that ‘individual criminality’ was often a secondary concern, to be controlled by the new rural police created in 1793. Indeed, whilst William Sleeman proudly exclaimed that *thagi* had almost been ‘wiped out’ between the years 1831 and 1843, at around the same time, in 1838, a report concluded that there were serious defects in the ordinary system of law.<sup>25</sup> This system of control has been the subject of several key studies.

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<sup>23</sup> Sandra Freitag, ‘Collective Crime and Authority in North India’, p. 142

<sup>24</sup> Ibid.

<sup>25</sup> The defects in the *Mofussil* Police, concluded the Bird Committee Report of 1838, ‘pervade every grade of the Establishment...magistrates are overwhelmed, *darogas* and the subordinates corrupt...and

Ranjan Chakrabarti has emphasised the negative impact of the Raj upon the traditional social and political order in rural society which he states broke down due to the ‘forceful impact of the Raj.’<sup>26</sup> Chakrabarti has argued that state institutions in the form of the police and the courts of law were not embraced by the rural population of Bengal because it was far removed from the local *zamindari* justice to which they were accustomed.<sup>27</sup> Basudeb Chattopadhyay, however, has stated that colonial power was not all-encompassing in rural society. Chattopadhyay argues that far from their power being destroyed, local leaders could adapt to and indeed manipulate the new system.<sup>28</sup> In other words, the *zamindars* may have been stripped of their policing powers but government officers were still dependent upon them to assist in the apprehension of criminals. Crucially, the *zamindars* still had the power to nominate and remove village *chowkidars*, thus ensuring that the East India Company was dependent upon them for local information. The policeman may have been the visible link between the rulers and local society, but it was the *chowkidar* who was the real link to information regarding criminal matters and he was largely under the influence of the *zamindar*. Added to this, Chattopadhyay continues, the police were themselves more amenable to local forces as opposed to the colonial rulers. Thus, the colonial authorities may have ensured that the *thana*, in form at least, represented the single, exclusive authority of the colonial state. However, in the everyday running of the system of criminal administration, there was in existence what Chittabrata Palit

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the community prefer being robbed rather than seek the assistance of the police.’ *Police (Bird) Committee Report* (1838), p. 1-2

<sup>26</sup> Ranjan Chakrabarti, *Terror, Crime and Punishment*, p. 268

<sup>27</sup> *Ibid*

<sup>28</sup> Basudeb Chattopadhyay, *Crime and Control in Early Colonial Bengal: 1770-1860*

has termed a 'parallel government', the purpose of which was to 'keep landlord power at a minimum yet responsibility at a maximum.'<sup>29</sup>

What these various studies stress is the variety of conflicting interests which would often collide. The protection of investment, the desire to maintain the 'levers of social control' at minimum cost and the expectation that local elites would assist the government despite stripping them of their traditional powers, together led to a precarious relationship between local society and the colonial government. This, in turn, would have an impact upon the way in which the system of criminal administration would operate. The uneasy coexistence between the civilising mission and the practicalities of empire would become even more visible and fragile following the assumption of Crown control in 1858.

The process of trying to tighten the administration and create a more efficient system had begun long before the Mutiny of 1857. Indeed, Thomas Macaulay had arrived in 1834 to draft the Indian Penal Code as a single system of law; one that would be marked by its unity and simplicity – like the English system but without the cumbersome technicalities. A spate of legislation in the years after 1857 reflected this in the form of the Police Act V of 1861, the Criminal Code of Procedure of 1862 and the Indian Evidence Act of 1872. Each act in principle clearly defined the role, responsibility and procedure to be followed by the agencies of the state – including the role of the rural community, which was to 'assist' in the information-gathering process.

James Fitzjames Stephen may have triumphantly declared the success of the codification of law in India, but in fact it made the difficulties of applying theory to

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<sup>29</sup> Quote taken from D.J. McNeile, *Report on the Village Watch of the Lower Provinces of Bengal* (1866). See Chittabrata Palit, *Tensions in Rural Society: Landlords, Planters and Colonial Rule 1830-1860* (Chennai: Orient Longman Limited, 1998), p. 30

practice more visible. A number of scholars have critically examined how agencies within the system of criminal administration operated. Indeed, the archival material, which will be consulted throughout this study, has formed a part of their analysis. The colonial police in particular have been the subject of considerable scholarly attention because, as historians David Anderson and David Killingray have pointed out, they ‘played a vital role in the construction of the colonial social order. It lay very much at the centre of the ideologies of imperial rule that informed social construction as well as political domination.’<sup>30</sup> Moreover, as the ‘most visible public symbol of colonial rule, in daily contact with the population and enforcing the codes of law that upheld colonial authority, the colonial policeman stood at the cutting edge of colonial rule.’<sup>31</sup> He was also the symbol of colonial power. David Arnold has written extensively on the role of the police as servants of the state rather than the people.<sup>32</sup> Anandswarup Gupta has similarly noted the focus of the police upon crimes that were a direct threat to the colonial state.<sup>33</sup> Arvind Verma has also pointed out in his examination of police registers that the appearance of a strong government was often of greater importance than dealing with the underlying causes of crime.<sup>34</sup> Arun Mukherjee, whilst mainly focusing on a quantitative analysis of the levels of crime in colonial Bengal, nonetheless points out that the Indian Penal Code labelled a whole host of native practices as ‘criminal’. Thus the sudden ‘rise’ in certain types of

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<sup>30</sup> D. M. Anderson and D Killingray (eds.), *Policing the Empire: Government, Authority and Control 1830-1914* (Manchester: Manchester University Press, 1991), p. 10

<sup>31</sup> Ibid, p. 1

<sup>32</sup> David Arnold, *Police Power & Colonial Rule: Madras, 1859-1947* (Oxford: Oxford University Press, 1986)

<sup>33</sup> Anandswarup Gupta, *The Police in British India: 1861-1947* (New Delhi: Concept, 1979)

<sup>34</sup> Arvind Verma, ‘Consolidation of the Raj: Notes from a Police Station in British India, 1865-1928’ in Louis A Knafla, *Crime, Gender & Sexuality in Criminal Prosecutions: Criminal Justice History, Volume 17* (Connecticut: Greenwood Press, 2002), pp. 109-132



criminal activity reflected government attempts to categorise activities which were not traditionally considered to be deviant.<sup>35</sup>

An insight into the limitations of the colonial administration can be gleaned from these studies, which highlight the inequalities which were embedded within the institutions of the state. Thus, the broader restrictions of colonial policy and ideology are continuously emphasised. This is a theme, which will also be apparent throughout this study, but much more can be said about the working of the various agencies – *chowkidar*, police and courts – at the local level. The ways in which these key agencies interacted with each other, were caught between different demands, and the dilemmas and tensions that were subsequently exposed, can thus be further explored.

The work of Christopher Bayly is an important point of reference in such an examination. Bayly asserts that the intelligence gathering system established by the British, rather than reflecting a confidence in their understanding of native society, instead revealed British anxieties and uncertainties over their lack of knowledge about their colonised subjects. It was, argues Bayly, an information network ridden with ‘information panics...a product of the weakness and blindness of the state, rather than a set of governing assumptions.’<sup>36</sup> Of particular relevance to this thesis, is Bayly’s assertion that despite the creation of information gathering agencies, networks of information ‘beneath the level of the district office remained tenuous.’<sup>37</sup> One can also apply these observations to the system of criminal administration, the fragility of which, as this study will aim to demonstrate, was evident from lower

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<sup>35</sup> Arun Mukherjee, *Crime and Political Disorder in Colonial Bengal 1860-1947* (Calcutta: K.P. Bagchi, 1995)

<sup>36</sup> C.A. Bayly, *Empire and Information: Intelligence gathering and social communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1996), p. 370

<sup>37</sup> *Ibid*, p. 365

level agencies such as the *chowkidar* to the courts of law. How information about crime would be handled and distorted as it made its way along from one link in the chain of criminal administration to another will thus be a focal point of examination in this study.

An analysis of the chain of criminal administration in this way will also help to emphasise the importance of local agency within the colonial network of control and indeed the ways in which the ideology of empire itself would be complicit in creating a legal framework ridden with contradictions, a site within which British power was fractured and contested. These issues require further examination because the power of colonial ideology and hegemony tends to be overemphasised by some scholars. Nicholas Dirks has focused on the power of colonial discourse in subjugating Indian agency<sup>38</sup>. Dirks argues that colonial power was coercive enough to create and re-create colonised society, effectively silencing, and marginalising, Indian agency throughout the colonial period.

As influential as Dirks' observations are, one notes that Indian agency is missing from his work. That is, by assuming that colonial discourse is powerful enough to silence the colonised subject, he does not probe further how Indian agency could respond to imperial agendas. Furthermore, he has undermined colonial constructions on the basis that they were part of a wider hegemonic project in which the British alone could 'define what is acceptable and what is not and what is civilised and what is not.'<sup>39</sup> However, it is important not to condemn completely the role of colonial constructions. For, as this study hopes to demonstrate, once the

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<sup>38</sup> See Nicholas B. Dirks, 'The Policing of Tradition: Colonialism and Anthropology in Southern India' in *Comparative Studies in Society and History*, Volume 39, Number 1 (January, 1997), pp. 182-212 and Nicholas B. Dirks, 'Castes of Mind' in *Representations*, Number 37, Special Issue: Imperial Fantasies and Postcolonial Histories (Winter, 1992), pp. 56-78

<sup>39</sup> Nicholas Dirks, 'The Policing of Tradition', p. 202

constructions in colonial sources are, in a sense, peeled away, one can still observe the 'everyday realities' of Indian agency, the problems they experienced and how, if they chose to employ the institutions of the state, they could do so on their own terms. Ranajit Guha and a range of scholars, in the influential *Subaltern Studies* series, have sought to undermine colonial discourse by pointing to the ways in which the subaltern could offer resistance.<sup>40</sup> Rosalind O'Hanlon, has also added that agents are not helpless victims nor do they necessarily have to engage in overt, physical resistance which results in some form of submission. Rather, she stresses that one should also focus upon the subtle, 'everyday forms' of resistance which people can employ, forms that are more influenced by the politics of family life and personal relationships rather than any adherence to politics on a national level.<sup>41</sup>

The inconsistencies of colonial policy also shaped local responses to the criminal justice system. Whilst Dirks emphasises the power of British rule, this study hopes to point to those areas where British power was almost fighting with itself. As well as Indian agency remoulding the institutions of the state to suit their own needs, the agents of the state would themselves contest imperial agendas, which were often unworkable in a local environment. The fractures in imperial policy would mean that the chain of criminal administration was a site where a number of issues would be contested, and not just between coloniser and colonised.

The influence of these factors- from fractured colonial policy to the personal agendas of local groups themselves- upon the chain of criminal administration forms the main body of this study. An analysis of the system will begin with Chapter three,

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<sup>40</sup> See, for instance, Ranajit Guha (ed.), *Subaltern Studies: Writings on South Asian History and Society* (Oxford: Oxford University Press, 1982)

<sup>41</sup> Rosalind O'Hanlon, 'Recovering the Subject: Subaltern Studies and Histories of Resistance in Colonial South Asia' in *Modern Asian Studies*, Volume. 22, Number 1 (1988), pp. 189-224

which will focus on the first link in the chain of criminal administration, the *chowkidar*. Giriraj Shah, in his critical examination of the Police Act V of 1861, has argued that the Commission of 1860, despite being established with the specific aim of creating a centralised structure, did not actually ‘make any special recommendations for the rural police structure.’<sup>42</sup> He further adds that although attempts were made to extend the regular system of policing to rural areas, ‘police stations were so sparsely distributed in rural areas that the bulk of police resources were reserved for urban areas.’<sup>43</sup> The scarcity of, particularly financial, resources meant that the *chowkidar*, poorly paid and poorly regarded, often belonged to the criminal sections of society.<sup>44</sup> He was nonetheless a key agent in rural society. He was integral to the policing network yet he was not a fully fledged member of the colonial police force because the colonial government still wanted to retain a link to local society. The problem was that the inability to remove him fully from that society meant that he was subject to a number of influences. How the colonial government tried to bring the *chowkidar* under state control *without* removing him from these local influences will be examined in the third chapter. By analysing these attempts made by the state to control the *chowkidar*, the intention is not only to emphasise the conflict in interests, as well as different perceptions of authority between state and local elites, but also to highlight the ways in which the colonial authorities were themselves complicit in maintaining informal networks of control that would often be at odds with the law of the state.

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<sup>42</sup> Giriraj Shah, *History and Organisation of the Indian Police* (New Delhi: Anmol, 1999), p. 208

<sup>43</sup> Ibid.

<sup>44</sup> In a particularly interesting example, which demonstrates the mistrust surrounding the *chowkidar*, in October 1865 the Public Works Department decided to replace Police Guards with *chowkidars*, who would now be responsible for the surveillance of various buildings and offices. It was part of a cost-cutting exercise yet the watchman was viewed with so much suspicion and mistrust that ‘locks and bolts were to be supplied to doors and windows’. See *Proceedings of the Public Works Department for October 1865*

The presence of the policeman within this informal network, and the manner in which he interacted with the *chowkidar* and the locality, suggests that his role as a ‘corrupt, vicious’ officer of the state needs to be more closely examined. The reluctance of the local community to confide in the *darogah* did not mean that he was completely removed from the affairs of society. That he could be violent and oppressive was a fact. But it was also the case, as various memoirs and police reports suggest, that he could not afford to alienate the local community unreservedly. Indeed, the native policeman could often demonstrate a frustration with official procedures, especially those that complicated matters and, in his eyes, hindered the process of capturing criminals and ‘giving out’ justice. The different pressures that the *darogah* faced from the state on the one hand and the local community on the other, and how he adjusted official procedures according to the needs of the local population at different times will be examined in the fourth chapter of this study.

The fifth chapter of this study will focus on the courts of law, which were the third link in the chain of criminal administration. The British court was the symbol of colonial rule, a key legitimising tool that would signify the supremacy of the foreign rulers and their form of law, order and justice. But it was often at odds with more local forms of dispute resolution and one focus of this chapter will be to examine the disparity between local justice and colonial law. What is also noticeable within the archival reports, particularly in the appeals of magistrates dismissed from their posts for deviating from procedure, is the uneasy tension that existed between magistrates at the lower level courts and the upper echelons of colonial government. The other aim of this chapter is to consider the nature of the hostilities within the network of control, and the extent to which the colonial government was willing to tolerate

procedure being set aside by subordinate officials. Tensions in colonial policy would also be revealed through the system of jury trial in India, and the chapter will consider the dilemmas that the system would pose for the authorities.

By examining the ways in which both rural actors and the agencies of the colonial state chose to interact with each other, this study will reconsider the ‘democratic deficit’ which is said to exist in post-colonial India. The machinery of control implemented during the colonial period has been inherited by the modern Indian state.<sup>45</sup> As a result, scholars such as Kalpana Kannabiran and Upendra Baxi have pointed out that the network of control has remained in the hands of a powerful few and that the Indian state can itself be complicit in crimes, dealing primarily with specific threats whilst overlooking more ordinary forms of crime.<sup>46</sup> By focusing on particular types of threat and labelling whole communities as criminal, it is argued that the Indian Constitution and human rights are undermined. And as scholars such as Meena Radhakrishna have noted, it is those formerly known as ‘criminal tribes’ that feel the full force of the law in this respect.<sup>47</sup>

This study does not intend to dispute these findings. Rather, the purpose is to try and emphasise the flexibility of the system of criminal administration in British India, which, whilst it could be seen as the machinery of oppression, was at the same time sufficiently flexible to act as a site within which various actors could protest, bargain and manipulate the various agencies of the state. By emphasising the flexible

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<sup>45</sup> The Act of 1861, for instance, argues S.R. Nigam, ‘still forms the basis of the present structure and organisation of the police in India.’ See S. R. Nigam, *Scotland Yard and the Indian Police* (Allahabad: Kitab Mahal, 1963), p.12

<sup>46</sup> See Kalpana Kannabiran and Ranbir Singh (eds.), *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (New Delhi: Sage Publications India Pvt Ltd, 2008) and Upendra Baxi and Bhiku Parekh (eds.), *Crisis and Change in Contemporary India* (New Delhi: Sage Publications India Pvt Ltd, 1995)

<sup>47</sup> See Meena Radhakrishna, ‘Colonial Construction of a Criminal Tribe: Yerukulas of Madras Presidency’ in *Economic and Political Weekly*, July 8-15, (2000), pp. 2553-2563

nature of the system, the intention is to undermine simplistic binaries of power in which one group or institution is pitted against another and instead highlight the complex nature of their interaction which can evoke a number of different responses.

The manner in which the system of criminal administration would be operated by officials, and employed by local society, was dependent upon various perceptions of crime and criminality. The differing perceptions of crime – of both the colonial rulers and native society – form one focus of the second chapter of this study. The other focus is upon the contradictions within colonial policy regarding the perception and treatment of crime. On the one hand, the British held very specific ideas about crime within native society. It was a colonial stereotype of rural society – religious, subservient, childlike, yet prone to sudden outbursts of extreme violence – which would serve a number of purposes. The British could emphasise their civilising mission to improve the moral nature of native society. What would often challenge the stereotype, as the second chapter will aim to demonstrate, was not so much the differing perceptions of local society but the inconsistencies inherent within colonial policy itself. It was a policy which would make visible a dilemma in which the desire to avoid intervention in the private domestic sphere of the native undermined both law and the idea of an improved morality – the pillars of the civilising mission. By examining the differences in perception between local society and the state, as well as the contradictions which shaped state policy, the intention is to show that challenges to the system of criminal administration were made not only by local groups from outside that system, but from within the imperial administrative network itself.

## Chapter Two: Crime, Locality and Empire

The line which divides punishable wrongdoing from some forms of legal commercial enterprise is a very narrow one... a man is not punished for being immoral but for breaking laws- when he is found out.<sup>1</sup>

This was the view expressed by crime writer and journalist Hargrave Lee Adam in his critique of the criminal justice system in England at the turn of the twentieth century. Keeping in line with a theory of crime, which stressed the adverse effects of an urban environment upon the physical and moral health of an individual, Adam was keen to point out the various flaws of the legal system which exacerbated the crime problem. Above all, he emphasised the inability of the law to influence the moral behaviour of individuals, the failure of which, he argued, led to the prevalence of crime amongst those at the bottom of the social scale. For Adam, social reform and the improvement of the moral character was the key to a healthy society. Without moral elevation to ensure that one could distinguish between ‘right’ and ‘wrong’, alienation and disrespect for the law amongst vulnerable sections of society would be the only result. But the reluctance of the legal authorities to enter the private domain of the individual and set a positive moral tone ensured the continuation of a system in which English judges were blindly subservient to ‘illogical, oppressive and biased’ laws.<sup>2</sup> The tense relationship between concepts of law and morality became even more problematic in British India, where they were widely considered to be the pillars of the colonial ‘civilising mission’.

The main intention of this chapter is to examine how the clash between issues of law and morality played out in colonial Bengal. Section one examines local

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<sup>1</sup> Hargrave Lee Adam, *The Story of Crime: From the Cradle to the Grave* (London: T Werner Laurie, 1908), p. 331

<sup>2</sup> Ibid.



perceptions about crime and ‘moral behaviour’, which were at odds with those held by the colonial rulers. This clash was further compounded by the contradictions inherent within colonial policy itself, within which broader imperial interests undermined other concerns. Section two, then, examines these contradictions, within which the law and ideas of morality coexisted uneasily.

Crime, and the reformation of the criminal, was a central feature of the ‘civilising mission’ in India. Ideas of moral progress, order and responsibility, which were closely associated with this process of reformation, proved to be powerful legitimising tools. A key feature of the archival material, ranging from administration reports to personal memoirs, is the carefully constructed image of crime in India. It is one in which land, women and religion are the main causes behind crime in India.<sup>3</sup> The native community is subservient yet passionate; docile yet prone to sudden bursts of violence. Indeed, it is the ability of the village to transform into a mindless mob, giving out its own rough justice, which forms the focus of many administration reports. A land dispute elicits a mob-like response with opponents torn ‘limb by limb’; an act of adultery leads to murder; a child-wife is ‘ravished’; crime is committed in the name of religion. Members of the village are engaged in a ‘cover-up’ operation, making it difficult for the authorities to detect the crime. The colonial stereotype, then, resurfaces continuously, one in which crime is attributed to the lawless and immoral nature of the rural community, incapable of telling the truth. Docile or violent, what was certain amongst official circles was the absolute necessity of British presence to, firstly, protect the law-abiding who were ‘incapable

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<sup>3</sup> See Cecil Henry Walsh, *Indian Village Crimes* (London: Benn, 1929), Augustus Somerville, *Crime and Religious Belief in India* (Calcutta: The Criminologist, 1929) and Edmund Cox, *Police and Crime in India* (London, S Paul & Co, 1911)

of self rule' and, secondly, to control the lawbreaking groups in Indian society, both of which would require good laws and moral progress.

The construction of the criminal and criminality within a colonial context has received much scholarly attention. Nicholas Dirks has argued that colonialism played a key role in the Enlightenment project, acting as a 'blank canvas' upon which the British, through scientific techniques, could 'know', 'create' and 'control' their colonial subjects.<sup>4</sup> Christopher Bayly, whilst not denying the significance of colonial constructions, calls into question the power of colonial discourse, arguing that, far from being a consistent tool by which the British could confidently govern and control the colony, it 'remained self-contradictory, fractured and contested.'<sup>5</sup> The 'creation' of Indian society, and the criminal within it, has led to a vast amount of literature examining not only the political agendas behind the construction of a particular social order but also a critical analysis of the colonial discourse which produced the Indian criminal. Race, anthropometry and other surveillance techniques have all been critically analysed by scholars eager to 'deconstruct' the Indian criminal and consider the wider historical forces at play.<sup>6</sup>

What is stressed in these studies is the idea that colonial anxieties were central to the construction of the criminal. What they also emphasise is that such anxieties did not end once the colonial gaze had created the Indian criminal, knowable and organised into various categories. These categories emphasised not the individuality of the criminal, but the idea of criminal groups. The emphasis upon

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<sup>4</sup> Nicholas Dirks, 'Introduction' in *Colonialism and Culture* (Ann Harbor: Michigan University Press, 1992)

<sup>5</sup> C.A. Bayly, *Empire and Information*, p. 370

<sup>6</sup> See, for example, Anand Yang, *Crime and Criminality in British India*, Crispin Bates, 'Race, Caste and Tribe in Central India: The Early Origins of Indian Anthropometry' in P Robb, (ed), *The Concept of Race in South Asia* (Oxford: Oxford University Press, 1995) pp. 219-259 and Christopher Pinney, 'The Laboratory of Mankind' in C.A. Bayly (ed), *The Raj, the British and India: 1600-1947* (London: National Portrait Gallery, 1990) pp. 252-263

criminal groups of course made it easier for the colonial authorities to control them through special legislation, such as the Criminal Tribes Act of 1871, which has been extensively examined by scholars such as Meena Radhakrishna and Sanjay Nigam.<sup>7</sup>

That the construction of the Indian criminal was influenced by a number of broader imperial projects and concerns, then, is a theme that runs strong in a number of studies. The criminal group was the key focus of colonial surveillance, whilst rural incidents that were reported were dismissed as crimes arising from immorality; crimes that would never abate until there was an improvement in native morality. This construction was ultimately reflective of colonial anxieties about the ‘knowledge gap’ between the state and its subjects. Lack of knowledge remained a source of anxiety for the authorities, which in turn would strengthen stereotypes about Indian society. Yet, as will be argued in this chapter, beneath the layers of construction, one can still observe the everyday realities and concerns of local society. In this process, one can also observe the differences in local perceptions about criminal behaviour and morality.

It is important to consider these variances in perceptions because it is not enough for an act to be labelled as ‘criminal’ by the law; how it is perceived by the wider community is also crucial. Debkamal Ganguly, has argued that in the colonial context, an act can be positioned as a ‘crime’ only if we have a ‘picture of centralised authority in the mind – the definition of ‘crime’ changes if the authority, and the penetration of that authority, changes.’<sup>8</sup> In a similar vein, scholar Hans Boutellier has

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<sup>7</sup> See Meena Radhakrishna, ‘Colonial Construction of a Criminal Tribe’ and S Nigam, ‘Disciplining and Policing the “Criminals by Birth”, Part 1: The Making of a Colonial Stereotype – the Criminal Tribes and Castes of North India’ in *Indian Economic and Social History Review*, volume. XXVII, April-June 1990, pp. 131-164 and S Nigam, ‘Disciplining and Policing the “Criminals by Birth” Part 2: The Development of a Disciplinary System 1871-1900’ in *Indian Economic and Social History Review*, volume. XXVII, July-Sept 1990, pp. 257-287.

<sup>8</sup> Debkamal Ganguly, ‘The Culture of Crime Pulp Fiction in Bengal’ at [www.sarai.net](http://www.sarai.net)

noted that a criminal act not only ‘reveals something about the morality of the perpetrator but also about the morality of the culture that disapproves of the act in question.’<sup>9</sup> For Boutellier, it is crucial that criminal law represents a wider public morality. Bearing this in mind, the first section of this chapter will examine Indian perceptions of crime which would ultimately determine what use Indians made of the legal institutions of the state.

The construction, and subsequent stereotype, of the Indian criminal once stripped away also reveals a number of anxieties relating to the imperial agenda itself. Crime and religion were inextricably linked in colonial accounts yet at the same time, whilst crime could fall within the public legal sphere, the issue of religion was considered to be a moral one – one that fell within the private domain of the Indians and one with which their colonial rulers were reluctant to interfere. Whilst specific ‘religious crimes’ such as *thagi* and *sati* in the early days of colonial rule had been carefully clothed with a criminal aspect to justify state intervention using special legal measures, dealing with crimes using the ordinary machinery of law was much more problematic.

With this in mind, the second section of this chapter considers the types of dilemmas, both involving crimes relating to the private domain as well as those within the public sphere, which were faced by the state. One such crime was that of poisoning. Whilst William Sleeman had been given free rein to exterminate the thugs, suggestions to do the same with cases of poisoning met with a more muted response from local governments in the period following the Mutiny of 1857. Thus, even though poisoning fell within the strictly public ‘legal’ sphere, it still

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<sup>9</sup> Hans Boutellier, *Crime and Morality: The Significance of Criminal Justice in Post Modern Culture* (Dordrecht: Kluwer Academic, 2000), p. 4

undermined the ability of the colonial state to suppress it effectively. Why the construction of the poisoner as a thug-like threat was so difficult to achieve will be considered further in this chapter. Another dilemma faced by the authorities was dealing with crimes which were associated with questions of morality. Both law and the idea of improving native morals were crucial to the justification of British presence in India. But, as the examination of specific moral cases in the second section will demonstrate, the pillars of the civilising mission – legality and morality – actually undermined each other. There was a conscious effort made by the British to avoid their moral mission in India through their own laws. Thus, not only did these ‘moral crimes’ undermine the law but they exposed the fissures in colonial policy in India – a policy within which the rule of law coexisted uneasily with the policy of non-interference, particularly in matters concerning the private sphere of their colonised subjects.

## **2.1 Law, Morality and the Criminal**

The fragile relationship between law and morality has been a contentious issue in the fields of legal philosophy and criminology over the years. M. J. Sethna has pointed to the uneasy coexistence that exists between the two concepts, stating that ‘morality is internal and involves the freedom of choice...but the law is external and will always have the force of coercion behind it.’<sup>10</sup> In a similar vein, legal theorist Joseph Raz has also considered the paradoxical nature of the relationship between the concepts of authority and autonomy and the ways in which the disparity between the two can highlight a conflict between different moral standards.<sup>11</sup> In particular, the debate

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<sup>10</sup> M.J. Sethna, *Society and the Criminal* (Bombay: Leaders’ Press, 1952), p. 12

<sup>11</sup> Yielding to the authority of another, Raz argues, inevitably results in the loss of autonomy and obeying decisions of that authority which may differ from one’s own moral standards. See Joseph

between legal positivists and those in support of a natural theory of law has been the subject of much attention. Neither group doubts that moral values form the base of legal systems. But whilst Lon Fuller has emphasised the ‘inner morality of law’, stating that if the law does not represent certain principles then it cannot be deemed to be law at all,<sup>12</sup> legal positivists, following in the footsteps of HLA Hart, have argued that ‘whether a society has a legal system depends on the presence of certain structures of governance, not on the extent to which it satisfies ideals of justice, democracy, or the rule of law.’<sup>13</sup>

The precarious relationship between law and morality has also been examined by legal theorist Ferdinand Schoeman, who has focused upon the differences between the public domain and the distinctly private realm, of which morality is a crucial feature.<sup>14</sup> Greater discretion is granted in the private than in the public domain because ‘private life is the sphere in which individuals relate as individuals and because maintaining relationships between individuals as individuals is more demanding than maintaining relationships between individuals as generic role players.’<sup>15</sup> Non-interference is an integral part of this process and even when outside intervention is deemed a necessity, the domain is still recognised as private because a personal relationship is at issue. As one governmental committee, set up to consider whether homosexuality in 1950s Britain should be decriminalised, concluded, the ‘function of the criminal law is to preserve public order and decency,

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Raz, *The Authority of Law: Essays on Law and Morality*, 2<sup>nd</sup> edition, (Oxford: Oxford University Press, 2009)

<sup>12</sup> Leslie Green, "Legal Positivism", *The Stanford Encyclopedia of Philosophy (Fall 2009 Edition)* <http://plato.stanford.edu/archives/fall2009/entries/legal-positivism>. See also Lon Fuller, *The Morality of Law*, (New Haven: Yale University Press, 1965)

<sup>13</sup> Ibid. See also H.L.A. Hart, *The Concept of Law*, 2<sup>nd</sup> edition, (Oxford: Oxford University Press, 1994)

<sup>14</sup> See Ferdinand Schoeman, *Privacy and Social Freedom* (Cambridge: Cambridge University Press, 1992)

<sup>15</sup> Ibid, p. 10

and also to protect citizens from offensive and injurious elements. Beyond this, unless society wants to equate crime with sin there must remain a realm of private morality, which is not the law's business.<sup>16</sup>

In theory, non-interference in issues of morality is ideal but in practice, the line dividing the law from questions of morality has proved to be a blurry one. In his influential study of village culture in early modern Germany, David Warren Sabean has argued that the state 'attempted to elicit obedience directly via religious institutions.'<sup>17</sup> The ways in which quarrels within the local community were made visible through these religious institutions, and the important role of the court in resolving disputes and conflicts, forms a central part of his study. In a similar vein, Ishita Bannerjee-Dube, in her examination of the relationship between law and religion in India, has argued that the machineries of law play a crucial role in the creation of 'ordered religion'. Modern law, she has argued, with its authoritative texts and the 'facts' and evidence which they provide, allows a movement to transform itself from a fluid, flexible religious group into a fixed, ordered religion. It is within the law court that everyday disputes between rival factions are played out and 'facts' accordingly modified.<sup>18</sup>

Whilst the issue of religion has traditionally been associated with morality, violence, so often seen as an act which falls squarely within the state controlled public sphere, has also been subjected to critical examination by a number of

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<sup>16</sup> 'Wolfenden Committee Report of 1957' quoted in Raymond Wacks, *Law A Very Short Introduction* (Oxford: Oxford University Press, 2008). With regards to the issue of crime and sin in the sphere of positive law, M J Sethna has stated that 'convenience and practicality' lie behind the decision of authorities not to punish immoral acts within the legal domain.' Furthermore, he has added that the law does not wish to 'make acts of charity, goodness and charity compulsory.' See M.J. Sethna, *Society and the Criminal*, p. 9

<sup>17</sup> David Warren Sabean, *Power in the Blood: Popular Culture and Village Discourse in Early Modern Germany* (Cambridge, 1984)

<sup>18</sup> Ishita Banerjee-Dube, *Religion, Law and Power: Tales of Time in Eastern India 1860-2000* (New York, 2007)

scholars. Historian Katherine Watson has argued that throughout the nineteenth century violence in western societies was a 'shifting category depending on who defined it.'<sup>19</sup> In a similar vein, Efi Avdela in an examination of Greek society, long considered the 'Other' of Western Europe, has stated that 'violence attributed to other states, locations or people has historically been a means of underpinning western claims to civilisation.'<sup>20</sup> For Nandini Sundar, the law and media themselves have been crucial in shaping and reshaping public morality in such a way that state-sanctioned violence is legitimised. By doing so, she has argued that modern states can highlight the 'culpability for violence' of the groups they regard as a threat, whilst concealing their own culpability in the process.<sup>21</sup>

The uneasy coexistence between law and morality within a system of governance, then, is central to the various debates amongst scholars. These dilemmas are particularly marked when placed within a colonial context, where law and morality were closely entwined. 'Good laws and moral progress' were what defined British rule in India. Orientalist empiricism, with the emphasis upon scientific techniques and categorisation, enabled the British to construct their own truth about crime and the criminal in India. It was, as historians such as Sandra Freitag have shown, a process that allowed the British to construct a social order within which concepts of the criminal group, caste and religion were emphasised.<sup>22</sup>

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<sup>19</sup> Katherine Watson, *Assaulting The Past: Violence and Civilisation in Historical Context* (Newcastle: Cambridge Scholars Publishing, 2007), p.5

<sup>20</sup> Efi Avdela, 'Introduction: de-centering violence history' in Efi Avdela, Shani D'Cruz and Judith Rowbotham (eds.), *Problems of Crime and Violence in Europe 1780-2000: Essays in Criminal Justice* (New York: Edwin Mellen Press, 2010), p. 20

<sup>21</sup> Nandini Sundar, 'Toward an Anthropology of Culpability' in *American Ethnologist*, Volume 31, Number 2, May 2004

<sup>22</sup> Sandra Freitag, 'Crime in the Social Order of Colonial North India' in *Modern South Asian Studies*, Volume 25, Number 2, (1991), pp. 227-261



In the early days of colonial rule, it was a programme of construction which was powerful enough to emphasise the ‘immoral’ nature of practices such as *thagi* and *sati* as well as the duty of the British in exterminating them and establishing law in a previously lawless society. In the late nineteenth century, the extermination of ‘special threats’ was replaced by the idea of the control and containment of those labelled ‘criminal’ under special legislation. Concerns raised by authorities over the threats posed to the liberty of the subject were considered secondary to the ‘protection of society as a whole.’<sup>23</sup> The purpose of special legislative measures, beginning with the Criminal Tribes Act of 1871, was to simultaneously remove certain groups from their ‘private space’ and place them squarely within the public sphere. Within this public sphere, the colonial state alone had the exclusive authority to contain and control groups which it regarded as a threat to the colonial order.

The labelling of such groups as ‘criminal’, and their subsequent placement within a controllable public sphere, also provided the authorities with the opportunity to continuously emphasise the ‘immoral’ nature of these groups. Crime was their profession into which they had been born, ensuring, what one account described as, a ‘pride in their criminality.’<sup>24</sup> Another stressed the ‘lack of moral guilt on account of what they regard as their proper business.’<sup>25</sup> Thus, magistrate Arthur Dash, recalling his time touring the interior districts of Bengal, described the tribes providing his camp with evening entertainment as ‘social pests...none of the women would marry a

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<sup>23</sup> In Punjab, the Deputy Commissioner of Ludhiana in particular had considered it a very unsatisfactory feature of the law that ‘persons who have never committed an actual offence should be liable to be committed to prison on evidence only of general repute.’ G Smyth, Commissioner and Superintendent, Jullunder Division to the Junior Secretary to Government, Punjab, No. 2562 E., dated Jullunder, 31 August 1893 in ‘Papers Relating to the Bill to provide for the more effectual surveillance and control of habitual offenders and for other purposes’ in L/PJ/6/366, File 125

<sup>24</sup> C.M. Edwards, *The Criminal Tribes of India* (London: S.P.G. 1922), p. 4

<sup>25</sup> Committee on Prison Discipline (1838), quoted in Norman Chevers, *A Medical Jurisprudence for Bengal and the North Western Provinces* (1856), p. 12

young man unless he had committed a serious crime, preferably murder and none of the men would give a glance at any girl who had not combined prostitution with some spectacular theft or violent assault.<sup>26</sup> Their placement under the Criminal Tribes Act allowed the police to ‘move them on whenever they had made things too hot in any campsite they occupied.’<sup>27</sup> The threats posed by such groups, and their supposed immorality, justified their placement under special legislation and under the complete control of the colonial state which would transform them into law abiding citizens. In later years, it was the gangs of Bengal which were placed under the Criminal Tribes Act, with an emphasis remaining on ‘systematic addiction’ of members ‘addicted to the commission of non-bailable offences against property.’<sup>28</sup> There was, then, a continuous preoccupation with the criminal groups of India and the ties that united these people which, as one deputy superintendent of police noted, were not only ‘criminal, but also to a great extent, religious, ethnological and geographical.’<sup>29</sup>

The emphasis upon particular threats had an impact upon how ordinary crime was viewed and treated by the colonial authorities.<sup>30</sup> The criminal tribe, it was believed, would always need to be placed under surveillance because crime was their

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<sup>26</sup> Sir Arthur Jules Dash, ‘A Bengal Diary’ Mss Eur C188 (1887-1918), p. 15.

<sup>27</sup> Ibid.

<sup>28</sup> See ‘Report on the Adamdighi Gang of Bogra brought under the Operation of the Criminal Tribes Act (III of 1911) by the Deputy Superintendent CID’.

<sup>29</sup> ‘Note by Anango Mohan Mukherji, Deputy Superintendent of Police, CID, Bengal. Calcutta, 9<sup>th</sup> April 1915’ in *Report on the Adamdighi Gang of Bogra*

<sup>30</sup> The focus upon disorder is particularly apparent in the police administration reports for the province of Bengal. In 1892, for example, the police authorities noted a sustained increase of murders in the district of Backergunge, which the inspector general of police had declared as more ‘criminal than any district in Bengal or the North Western Provinces’. Out of the seventy three cases it was the twenty one undetected cases involving gunshot assassinations which were singled out for special attention. There was a consensus amongst officials that this was the work of professional murderers hired for the deed. Four special inspectors were duly appointed to further investigate the ‘midnight assassinations’. The focus upon the prevention of disorder was particularly apparent during the rise of political crime in the first decade of the twentieth century, when ordinary crimes were described in brief tabular statements, whereas politically motivated crimes were analysed in much detail. See *Police Administration Reports for the Lower Provinces of Bengal for the Year 1892-1908*

‘profession’. Ordinary crime would not elicit the same type of response. One prominent official, when making a passing observation on crime in rural society, stressed the importance of the link between criminal groups and rural India, where groups could easily make themselves invisible amongst a vast rural population. Their control under criminal legislation was thus a necessity. But the habitual criminal was a distinctly ‘town manufacture. In villages, where everybody knows everybody else, and where the advent of every stranger forms a subject for general remark, the professional thief finds no scope for his abilities. Only the town could provide the thief with the adventure and material gain that the village sorely lacked.’<sup>31</sup>

The image of Indian rural society as unchanging, with its concerns focusing solely around the preservation of caste and religious faith, concerns that posed no threat to the authority of the state, is a predominant one in colonial accounts of Indian society. The simplicity of the Indian character was emphasised by Hargrave Lee Adam, who went onto conclude that the ‘Indian criminal is a much better man than the criminal in the West...the natives of India are neither intemperate nor violent when their caste prejudices are not interfered with.’<sup>32</sup> The authorities were particularly anxious to stress the temporary nature of crime arising out of religious fervour.<sup>33</sup> Thus, rural society was portrayed as largely controllable, only prone to acts of ‘violence’ periodically. Significantly, these acts are devoid of any political ambitions, being purely of a religious, personal nature which poses no real threat to the authority of the state.

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<sup>31</sup> See W.W.H., ‘Our Habitual Criminals, and What to Do With Them’ in *Calcutta Review*, July 1875; 61, 121, p. 56.

<sup>32</sup> Hargrave Lee Adam, *The Indian Criminal* (London, 1909), p. 1.

<sup>33</sup> One former official, for example, had pointed to ‘extraordinary cases of rioting which occurred in the Central Province in 1885 whereby an outbreak of religious superstition had led to a series of animal sacrifices, ‘beyond which there was no violence or lawlessness. They obeyed instructions to disperse without trouble and, the official continued, this outbreak of superstition occurred every thirty to forty years’. G.G. Bleur, ‘In an Indian District’ (Punjab) 1919. See Mss Eur F161/154

The stress placed by the colonial state upon the link between religion and Indian society has been the subject of much scholarly attention. What these studies have aimed to do is to undermine ideas about the ‘timeless religion’ of India which appears repeatedly in colonial accounts. Instead, they have emphasised the complex role that Indian religion plays in articulating various concerns within communities. Heinrich von Stietencron has argued that continuity and innovation are a central aspect of Indian religions, which allow people to make sense of, and respond to, changing experiences and challenges with which they are faced in everyday life.<sup>34</sup> David Hardiman, in his influential study of *adivasi* assertion, has argued that the act of spiritual possession, far from being ‘chaotic hysteria’, is actually a means by which they can air their grievances about specific hardships with which they are faced in this life.<sup>35</sup>

Thus, if one looks beyond constructions, and the resulting stereotypes, one can still view a process whereby groups try to address a range of concerns through their faith, ranging from the spiritual to the everyday realities of the world in which they live. It can be a process where they can assert their authority through a number of means. Nandini Sundar, for example, has examined local methods of handling deviance. Sundar, in her study of the state and witchcraft in modern day Bastar, has cited the weak relationship between the state and the local community as a cause of the accusations of ‘occult malpractice’ that exist in the region. Faced with

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<sup>34</sup> Heinrich von Stietencron., ‘Charisma and Canon: The Dynamics of Legitimization and Innovation in Indian Religions’ in Vasudha Dalmia (eds) *Charisma and Canon: Essays on the Religious History of the Indian Subcontinent* (New Delhi: Oxford University Press, 2001). See also SN Eisenstadt (eds), *Orthodoxy, Heterodoxy and Dissent in India* (Berlin: Mouton, 1984)

<sup>35</sup> Whilst the colonial stereotype always emphasised the native preoccupation with the ‘afterlife’, Hardiman correctly points out that in actual fact improvement in their current circumstances is of utmost importance to these communities and the act of possession allows them an opportunity to address these concerns. See David Hardiman., *The Coming of the Devi: Adivasi Assertion in Western India* (Oxford: Oxford University Press, 1987)

unexplained illness and death, a non-existent health system, the weakening power of traditional healers and a state reluctant to deal with such issues, the local community has a unique response to the problem to deviance. By ensuring that those ‘accused are beaten up or forced to give their land away to the whole village, local agents possess a degree of power, something which eludes beyond village life.’<sup>36</sup>

One can certainly apply this argument to local responses to cattle poisoning in the late nineteenth century. The crime of poisoning cattle, committed by those belonging to the *chamar* caste for the sake of obtaining the hide, was an act which received considerable government attention. Difficulty in regulating the use of poison, and the inability of the government to act decisively, not least because they had wider imperial interests to consider, ensured that the numbers of such cases continued to trouble a largely agricultural community, for whom cattle were crucial to the running of the rural economy and a means of subsistence. Cattle deaths resulting from disease were a huge cause for concern for village communities and their response to the problem could vary, changing from one invoking ritual to decisive physical violence. In 1903, in the district of Jessore, a *mochi*, engaged in skinning a cow, was attacked by a number of villagers who beat him so severely that he died. The villagers believed that if a *mocha* could be made to weep whilst skinning a cow, cattle disease would disappear from the village.<sup>37</sup> In 1873, to offer another example, the officiating commissioner of the Benares division noted that villagers believed that the deaths were the result of an evil spirit and

offered pig’s flesh and *shurab* to the ghosts of deceased chamars. When this failed to satisfy the villagers, they collectively proceeded to loot chamar villages, swinging up chamar wives

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<sup>36</sup> Nandini Sundar, ‘Divining Evil: The State and Witchcraft in Bastar’ in *Gender, Technology and Development*, volume. 5, part 3, (2001), p. 431

<sup>37</sup> *Police Administration Report for the Lower Provinces of Bengal for the Year 1903*

naked from the boughs of trees, after which, the villagers once again sought refuge in the theory of 'evil spirits'.<sup>38</sup>

By emphasising the resumption of this ritual, the commissioner turned the villagers from a threat, as seen in their sporadic act of violence, back into the non-threatening group concerned solely with issues of spirituality and the afterlife. Yet one cannot fail to notice that their response, whether expressed through faith or evil spirits or physical violence, was a result of very worldly and practical concerns. The colonial authorities would base their constructions of criminality around notions of violence and irrationality but one can note from the above example that beneath the construction, villagers were reacting in a situation where rural economy, and the livelihood of the village, was under threat.

Religion can play a crucial role in helping communities make sense of the challenges that they face in their everyday lives but the role of religion is not simply confined to dealing with grievances. It can also be used as a form of social control, particularly in questions relating to female conduct. In 1881, when the question of widow remarriage in India was discussed by social reformers, conservative sections of the Hindu community claimed that such an act would be 'immoral' according to their religious scriptures. One priest argued that widowhood 'was a practice of self-control, of renouncement of passion, worldly goods. The preservation of these led to gains in the next spiritual life and damnation if they were not followed. Remarriage and subsequently lying in the bed of another man was immoral and against humanity.'<sup>39</sup>

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<sup>38</sup> *Papers Relating to the Crime of Cattle Poisoning: Views of Local Governments on the Need or Practicality of a Law Restricting the Sale of Arsenic* (1881), p. 31

<sup>39</sup> 'Translation of a Sanskrit letter from Pandit Panchanadi Guttulal Ghanashyamji of Bombay, to the Under Secretary to the Government of Bombay, No. 753, dated 16 April 1885' in *Papers Relating to Infant Marriage and Enforced Widowhood in India* (1886). Others would state their views more

Sin and repercussions for family members in the afterlife were some of the consequences believed to result if women acted in opposition to their 'moral duty'. The role of these religious rituals and practices was solely to preserve a patriarchal social order in society. When this patriarchy was threatened by controversies, particularly by the Age of Consent debate in 1891,<sup>40</sup> orthodox members reiterated the religious obligations of women to ensure the well-being of their husbands in their next life. By doing so, orthodox members ensured that the patriarchal order was maintained and any attempts by social reformers to implement their own ideas of moral improvement via legal means would be constantly undermined.

Social control in a patriarchal community also reflects other concerns, which are rooted in questions of honour, reputation and the maintenance of a 'moral economy'. In an excellent analysis of the strong association between the concept of 'honour' and interpersonal violence, Efi Avdela has undermined the idea of 'senseless violence'. Honour is:

a fundamental social value binding members of a hierarchical family unit in a hostile, antagonistic world of equals, and prescribing specific gendered conduct namely female modesty and agonistic masculinity. So violent behaviour is a definitional ingredient of masculinity expressed via challenge (in honour crimes). Violence is as much a means of communication and recognition via which moral integrity is confirmed.<sup>41</sup>

The concept of honour, and the shame which results from dishonour, then, can act as a powerful mechanism of social control and regulation outside the state.<sup>42</sup> Thus, in

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bluntly. In one account, it was stated that 'man is the enjoyer, the woman is a commodity to be enjoyed...like cutlery she cannot be shared.' See Ibid.

<sup>40</sup> To be discussed further on in this chapter

<sup>41</sup> Efi Avdela, 'Introduction: de-centering violence history', p. 20

<sup>42</sup> Various scholars have analysed these mechanisms as they existed in nineteenth-century British society. In a series of essays edited by Judith Rowbotham and Kim Stevenson, for instance, the role of the Victorian press in shaping moral and social panics about the criminal in society has been critically examined whilst David Nash has undermined the Foucauldian argument that shame ceased as a major form of punishment in the nineteenth century. On the contrary, Nash has argued, 'shame is simply recast in new forms'. See also David Nash and Anne Marie Kilday, *Cultures of Shame: Exploring Crime and Morality in Britain 1600-1900* (Basingstoke: Palgrave Macmillan, 2010) and Judith

1886 Officiating Inspector General J.C. Veasey rather frustratingly noted that for every ‘one disgraceful intrigue we hear there must be hundreds which never come to light.’<sup>43</sup> Where, he continued, ‘jealousy and immorality is the cause and a woman the victim, it is plain that public opinion exercises no restraint.’<sup>44</sup> For Inspector General Veasey it was the lack of moral virtues within rural society which was of concern. But it can be alternatively argued that such acts of violence are, as Thomas Gallant has suggested in his examination of Greek rural society, ‘manifestations of self help justice...a sort of ritualised violence underlined by a common theme, that of honour and reputation.’<sup>45</sup>

Themes of honour and reputation are also visible in the police reports of Bengal. The reports are filled with an array of cases in which adultery, rape and intrigue are the prelude to a criminal act. Violence in defence of honour is particularly apparent in one case which occurred in the Dacca division in 1887. Madhu, following an ‘intrigue’ with the sister-in-law of a fellow villager, found his own wife becoming the victim of outrage. The outrage was committed by the brother of the aforementioned villager. He had wished to avenge his brother’s honour.<sup>46</sup> In other cases, violence was not an act of vengeance but a refusal by the offending party to quietly resolve the matter. In the 24 Parganahs of the Presidency Division, for

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Rowbotham & Kim Stevenson (eds.), *Criminal Conversations: Victorian Crimes, Social Panic and Moral Outrage* (Ohio: Ohio University Press, 2005)

<sup>43</sup> *Police Administration Report for the Lower Provinces of Bengal for the Year 1886*

<sup>44</sup> J.C. Veasey, Inspector General of Police for the Lower Provinces of Bengal. See *Police Administration Report For the Lower Provinces of Bengal for the Year 1886*

<sup>45</sup> Thomas Gallant, in ‘When “men of honour” met “men of law”’: violence, the unwritten law and modern justice’ in Efi Avdela, Shani D’Cruz and Judith Rowbotham, *Problems of Crime and Violence in Europe 1780-2000: Essays in Criminal Justice*, p. 71

<sup>46</sup> See *Police Administration Reports for the Lower Provinces of Bengal for the Year 1887*



instance, a man killed his cousin, his wife's paramour, with a blow on the head, not for taking the woman away but because she was not allowed to come back to him.<sup>47</sup>

At the same time, violent means could also be replaced by legal methods. In 1873, lack of regulation concerning Mohammedan marriages and divorces was, it was argued, leading to instances whereby a false case was made up by an aggrieved husband whose wife had eloped with 'her paramour' – the case only being dropped once he had his wife returned back to him.<sup>48</sup> Indeed, cases instituted in court reflected a range of domestic concerns. In 1899, a special report was produced relating to the increased numbers of outrages on young women by low class Mohammedans in the district of Mymensingh. It was argued that cases of outrage or kidnap were not quite what they seemed, with local newspapers such as the *Charu Mihir* displaying a 'tendency to exaggerate'. In actual fact, argued the Magistrate of Mymensingh, many of these women were not 'unwilling agents', many deciding to elope with their paramour. The unfortunate husband met this challenge to his masculinity through violent means, employing the assistance of his relatives and friends to 'crush his opponent' when discovered.

Honour could be preserved in other ways too. The magistrate noted that there were cases in which the husband, in order to save his own honour as far as possible, alleged that his wife was 'taken away because the house was attacked in force and she and he were powerless to resist.'<sup>49</sup> To support this statement, the husband would go on to name as the paramour's accomplices all those against whom he had enmity.

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<sup>47</sup> Ibid.

<sup>48</sup> 'Commissioner of Dacca to the Officiating Secretary, dated 12 February 1873, Number 71T' in *Offences Against Marriage in Eastern Bengal – Bengal Proceedings, Judicial Department, March 1873*

<sup>49</sup> See 'Letter from FR Roe, Magistrate of Mymensingh to the Commissioner of the Dacca Division, No. 1419J, dated Mymensingh, 4 July 1899' in *Bengal Proceedings, Police Department, August 1899*

In such cases although outright violence was not resorted to, the injured party could preserve his honour on the one hand, whilst on the other, he could strike a blow to his wrongdoer by employing the law as his weapon of attack, which in many cases proved to be an effective move.<sup>50</sup> The response of the authorities to this state of affairs would be to argue that immorality, particularly of the Mohammedan woman,<sup>51</sup> was the cause behind the ill use of legal institutions introduced by the colonial state.

Attacks upon the honour of an individual can also be regarded as an attack upon patriarchal authority. As well as the portrayal of the Indian woman as cunning and devious, the colonial authorities would also place emphasis upon her rather wretched plight within the domestic sphere.<sup>52</sup> The widow, noted one social reformer, 'if she be virtuous would earn her livelihood by begging or becoming a menial servant. If not virtuous, she would commit adultery and kill any illegitimate offspring.'<sup>53</sup> Thus, a wife is strangled by her husband for refusing to 'lie with him', another has her eye gouged out as a 'fitting punishment for her infidelity'<sup>54</sup> whilst yet another is 'kicked in the stomach for bad cooking.'<sup>55</sup> The response of the female to

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<sup>50</sup> Indeed, this was actively encouraged by village touts who 'had discovered that a jury will convict in such cases'. The result was that in 1898, out of 135 complaints, only fifty seven were found to be true. See Ibid.

<sup>51</sup> Roe had opined that many women left their husbands to 'become prostitutes' so the theory of 'kidnapped, missing or ravished' is never quite true' whilst the Officiating Commissioner of the Dacca Division commented that it was rare to find a Mohammedan woman who had not at least one paramour. He attributed this cause to the 'unlimited power of divorce which their religion gives them.' See Ibid.

<sup>52</sup> In the Presidency Division, a man was stabbed then strangled in his sleep by his two wives whose illicit connections required his removal. In the same division a woman attacked her husband as he slept in revenge for his having earlier prevented a meeting she had arranged with her paramour. *Police Administration Report for the Lower Provinces of Bengal for the Year 1889*

<sup>53</sup> B.M. Malabari, *Papers Relating to Infant Marriage and Enforced Widowhood*. It was also stated that in the United Provinces, within a ten year period, there were 'not less than seventy cases of infanticide every year'. *Serious Crime in an Indian Province, Being a Record of the Graver Crime Committed in the North Western Provinces and Oudh during 1876-1886* (Bombay, 1889), p. 11

<sup>54</sup> See 'Report on Crime in the Khulna Division' *Police Administration Report for the Lower Provinces of Bengal for the Year 1887*

<sup>55</sup> Ibid, 'Report on Crime in the Dacca Division'

ill-treatment could manifest itself in verbal abuse,<sup>56</sup> yet there were other forms of retaliation, of which poisoning was one.<sup>57</sup> For instance, to the authorities the act of abortion was a crime committed to conceal immorality prevalent in a country, within which female behaviour was heavily regulated.<sup>58</sup> But, as Ranajit Guha has argued, the act can also be interpreted as a subtle form of resistance to the patriarchal social order. Rather than being considered simply as an act of helplessness by women, abortion was an act which allowed women to ‘stop the engine of male authority from uprooting a woman from her place in local society.’<sup>59</sup> It was an act, Guha notes, which had a double purpose. On the one hand, it provided women with an option, a sense of control, in a society which closely regulated female behaviour. On the other, it saved them from complete social exclusion and shame.

One can also apply this argument to cases of reported infanticide. One observer noted that in the United Provinces, within a ten-year period, the average annual number of such cases was forty one. In Bengal, similar cases appeared consistently within police reports. In 1887, a woman in Mymensingh, after a quarrel with her husband and mother-in-law, jumped into the river at night with her three-month-old infant child.<sup>60</sup> In the Burdwan division in 1886, a woman cut her child’s throat after a quarrel with her husband.<sup>61</sup> She was acquitted on the ground of insanity. In the same district, a woman jumped into a well with her eighteen-month-old child

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<sup>56</sup> In Midnapore a woman on being asked by her husband to get him a ‘pan’, threw it at him, at the same time using foul language and giving him a kick. Enraged at this he murdered her and was on conviction sentenced to death. See *Police Administration Report for the Lower Provinces of Bengal for the Year 1887*

<sup>57</sup> See for example Charles Hervey, *Cameos of Indian Crime* (London: Stanley Paul & Co, 1912) and Lyttelton Stewart Forbes Winslow, *The Insanity of Passion and Crime* (London: John Ouseley, 1912)

<sup>58</sup> See Norman Chevers, *A Manual of Medical Jurisprudence for Bengal and the North West Provinces* (1856).

<sup>59</sup> Ranajit Guha, ‘Chandra’s Death’ in Ranajit Guha (ed). *Subaltern Studies 5: Writings on South Asian History and Society* (New Delhi: Oxford University Press, 1987), p. 64

<sup>60</sup> Ibid.

<sup>61</sup> See *Police Administration Report for the Lower Provinces of Bengal for the Year 1886*

as a result of a dispute with her father-in-law.<sup>62</sup> By endangering the lives of their children, particularly infant sons, and employing them as their weapon, women, although not able to undermine it, could still strike a blow to patriarchal authority. In a society within which the behaviour of women was closely regulated, and one which placed an emphasis upon the chief role of female as mother, women could use this role to upset conditions within the domestic household.

Honour and reputation also defined cattle theft, a 'crime' that appears continuously in police reports. Police authorities ruefully noted that owners preferred to pay *panha* and recover their cattle. To the authorities it was often described as a 'system of blackmail', a crime that was notoriously difficult to put down because it was spearheaded by influential, wealthy members of the community and victims were reluctant to inform the authorities for fear of being mistreated by 'ruffians' and, most importantly, lose any chance of recovering their stolen cattle.<sup>63</sup> Whilst these explanations were of importance at the same time, one can also suggest other explanations for the reluctance to report cattle theft. Firstly, the authorities themselves admitted that cattle theft was regarded as a prosperous trade by the native community rather than a criminal offence.<sup>64</sup> Secondly, as anthropologist Urania Astrinaki, in her study of animal theft in western Crete has suggested, such practices can be viewed as a 'test' to prove one's masculinity. Rather than a criminal act, the practice can be viewed as 'a serious challenge by which one achieves the qualities of "manhood", necessary for the recognition of a respectable personal and social

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<sup>62</sup> Ibid.

<sup>63</sup> In 1910, for instance, a wealthy zamindar in the Buxar subdivision was finally captured after years of 'levying blackmail from the residents of half a dozen jurisdictions whose cattle he had stolen by desperate ruffians'. See *Police Administration Report for the Year 1910*.

<sup>64</sup> If the cattle were not claimed then the villager could pass the beast from agent to agent, over hundreds of miles, and receive an animal of equal value in return. Mss Eur F161/55 Police Collection

identity group.’<sup>65</sup> For the ‘victim’ to report his loss would be to acknowledge his failure as a man. In the context of colonial India, it was indeed acknowledged by authorities that tribes ‘do not think that a youth is fully grown until he has stolen his first head, he is not permitted to wear a turban until he has done so.’<sup>66</sup>

There were also other ways for victims to respond to the practice. As one colonial official found in his study of the village community in Bengal, as long as the demands made by robber guards were within reason, then they were willing to uphold the system.<sup>67</sup> Only when thieves made unreasonable demands relating to the payment of ransom did villagers react collectively – through taking oaths, forming funds to compensate for lost cattle or setting alight the homes of the thieves. Once the matter was resolved, then the practice would resume. Thus, cattle theft was an act much more complex than a ‘criminal loss’ as defined by colonial law. It was an act which could elicit a number of responses. For some, it was a legitimate profession; for others it was a ‘game’ in which honour and reputation were put to the test. And for those for whom it was simply a case of theft, robbers could be made to act within a strict code of conduct. Thus, even robbers themselves were aware that for their trade to survive, it was important to preserve the moral economy of the village. Excessive demands would only lead to the disruption of their trade.

Thomas Gallant has argued that ‘unwritten social codes of behaviour’ were crucial features of rural response to, and treatment of, various local grievances and were a way of handling disputes in instances where the state ‘lacked legitimacy or

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<sup>65</sup> Urania Astrinaki, ‘Powerful subjects in the margins of the State’ in Efi Avdela, Shani D’Cruz and Judith Rowbotham. *Problems of Crime and Violence: Essays in Criminal Justice*, p. 212

<sup>66</sup> *Census of India for the Year 1911*

<sup>67</sup> J Matthai, *Village Government in British India* (London: Fisher Unwin, 1915)

state views were at odds with local norms and customs.<sup>68</sup> But it is also important to note the involvement of the state in preserving local customs. Certainly, in the case of cattle theft in British India, what is interesting to note is the complicity of the colonial state itself in maintaining the practice. David Gilmartin has argued that the state and the local community had to negotiate with each other on a number of levels. It was a relationship within which broader concerns, centring around ideas about property, would ensure that the state would always have to enter a bargaining process with local groups.<sup>69</sup> Indeed, broader imperial concerns ensured that limited resources were always directed towards acts which were a direct threat to the authority of the state. This would have a direct impact upon attitudes towards ordinary forms of crime, particularly those of a moral nature. For instance, in 1890, an article considered the problems experienced by the colonial authorities when dealing with cases where young children were murdered for their ornaments.<sup>70</sup> Indeed, the police administration reports frequently mention instances where children were often lured to a secret location by a 'trusted relative or family friend' before being slain. Introducing laws prohibiting the wearing of ornaments, the author argued, would be ineffective because 'making crime a vanity is a difficult problem to solve.'<sup>71</sup> Furthermore, the author continued, whilst the colonial state was efficient in 'warding off aggression and keeping the peace' in 'social questions the natives are giants and we infants.' What was needed, he concluded, was not a law to put an end to such a crime but education, through which local custom could be altered and native morality

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<sup>68</sup> Thomas Gallant, in 'When "men of honour" met "men of law"', p. 71

<sup>69</sup> David Gilmartin, 'Cattle, Crime & Colonialism: Property as Negotiation in North India' in *The Indian Economic and Social History Review*, volume 40, number 1 (January, 2003), pp. 33-56

<sup>70</sup> Anon, 'An Indian Crime' in *The Gentleman's Magazine* (July, 1890), pp. 72-79

<sup>71</sup> Ibid, p. 73

improved. It was only when educated members of the Indian community taught their illiterate peasants of such dangers that these crimes would cease.<sup>72</sup>

Whilst both the law and the idea of an improved morality would be central features in official attempts to control groups, in the case of ordinary crimes one can observe a conscious effort by the colonial state to avoid dealing with crimes of a social nature. Indeed, as the next section shall aim to demonstrate, the British would use their own laws to avoid dealing with such crimes, which contradicted the civilising mission in India. The aim of the next section is to consider these dilemmas and contradictions of colonial policy.

## **2.2 The Civilising Mission: Rhetoric versus Reality**

The arrival of the British in India, and their quest to establish an exclusive authority by which they had a monopoly of the crime control apparatus has been emphasised by a number of scholars. Whilst Radhika Singha has described the process as a ‘despotism of law’, Mukul Kumar has pointed out that exclusive authority was established either through ‘brute force or moral influence.’<sup>73</sup> It was an exclusive authority which rested on a paradox. As both Sandra Freitag and Meena Radhakrishna have pointed out in their respective studies, the process involved targeting any groups on the margins of society and labelling them as wandering or itinerant; yet it was the ruthless revenue policy pursued by the British which had an adverse effect upon the employment opportunities of certain communities. Forced into redundancy by the revenue policy, these communities would become the

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<sup>72</sup> Ibid.

<sup>73</sup> Mukul Kumar, ‘Relationship of Caste and Crime in Colonial India: A Discourse Analysis’ in *Economic and Political Weekly*, volume 39, number 10 (2010) p. 1086

‘wandering tribes’ that the British aimed to settle and control.<sup>74</sup> Nor has the fragile nature of carefully constructed colonial knowledge been ignored. Freitag has recognised that whilst this knowledge strengthened the cultural prejudices held by the British and justified the extraordinary measures they took against groups which they regarded as criminal, it was a knowledge that was ‘inherited from indigenous informants and then legitimised as scholarship in reference volumes.’<sup>75</sup>

Mark Brown, in his analysis of the Criminal Tribes Act of 1871, has suggested that tribes were targeted by colonial legislation because in the post-1857 period, the British did not wish to upset the landlord classes who had traditionally protected these tribes. The answer was to keep landlord and tribe separate through legislation specifically aimed at controlling the latter group.<sup>76</sup> Brown, elsewhere, has also sought to undermine scholarship that engages in what he considers to be a simplistic totalising Orientalist discourse about the colonial response to criminal tribes.<sup>77</sup> Rather, measures like the criminal tribes legislation, he has argued, ‘reflected a highly contested vision of the way in which India ought to be ruled. Such legislation was perhaps indicative of tensions within British political thought and strategies of government in India.’<sup>78</sup>

Disagreements over issues of governance, and the lack of coherence and predictability in colonial policy that would result from these, did not disguise the fact that the colonial response to specific problems of law and order were shaped by

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<sup>74</sup> See Sandra Freitag, ‘Crime in the Social Order of Colonial North India’ and Meena Radhakrishna, ‘Colonial Construction of a Criminal Tribe’

<sup>75</sup> See Sandra Freitag, ‘Crime in the Social Order of Colonial North India’, p. 243

<sup>76</sup> Mark Brown, ‘Colonial history and theories of the present: Some reflections upon penal history and theory’ in Barry Godfrey and Graeme Dunstall (eds.), *Crime And Empire 1840-1940: Criminal Justice in Local and Global Context* (Devon: Willan Publishing, 2005)

<sup>77</sup> Brown critiques the work of Meena Radhakrishna and Sanjay Nigam.

<sup>78</sup> Mark Brown, ‘Crime, Liberalism and Empire: Governing the Mina Tribe of Northern India’ in *Social and Legal Studies: An International Studies* volume 13, number 2, p. 193



anxieties about the British role in India. *Sati*, infanticide and *thagi*, the crimes that had been so publicly exterminated by a campaign driven by ideas of improved morality and law and order, reflected British anxieties and paranoia about their lack of knowledge about native society. A sense of control was gained only when these concerns were transformed from mere stereotype into fact and evidence through various empirical investigations. The knowledge that was generated through this transformation had the double purpose of both organising Indian society into controllable groups whilst emphasising the moral duty of the new rulers to impose a new set of standards upon these groups. Most importantly, the facts that were produced through these investigations were crucial in transforming ‘concerns’ into ‘definite crimes’ which posed a threat to the exclusive authority sought by the new rulers. These facts produced the necessary statistics that would act as evidence and subsequently justify state intervention via legislation. But the role of empiricism was a multifaceted one in the colonial context, particularly in the post-1857 period, when the idea of moral improvement met with a much more muted response whilst the control and containment of groups remained a key priority. On the one hand, empirical methods provided justification for state intervention in matters concerning specific threats to the authority of the colonial state. On the other hand, the facts produced through empiricism could also be used as justification for state non-intervention in matters involving the domestic sphere of the native community.

Poisoning was one such crime which would visibly highlight this delicate balance between intervention via regulation and the policy of non-interference which resulted from a need to protect wider economic interests. Poisoning cases in the colony were a subject much referred to in official colonial accounts. In India there

were two particular types of poisons which were a cause for concern. *Dhatura* was one described by some as an organised system of roadside poisoning, often referred as ‘*Dhatura* thugee’. Those who engaged in this particular form were described as direct descendants of the infamous thugs exterminated by William Sleeman in his celebrated campaign in the early nineteenth century. Indeed, a number of ‘official’ accounts of crime in India referred time and again to the expert ability of the professional poisoner to conceal himself in various guises, most notably in the form of a wandering *fakir*, and strike unsuspecting travellers. His ability to evade detection from the police further strengthened the belief that the *Dhatura* thug was an invisible yet ever present threat. The use of poison, easily and widely grown within the colony, as a method by which to target his victim further contributed to official anxiety over ‘*Dhatura* thugee’.

Arsenic was the other deadly poison which, in the words of one official, was most frequently used for homicidal purposes and was procurable in unlimited quantities in India because there was no act regulating the poison. Many accounts would refer to this poison as a ‘weapon of the weak’ in the domestic sphere where ‘women murder their husbands mainly by poison to continue affairs with their lovers.’<sup>79</sup> Indeed, whilst *Dhatura* led to the creation of the stereotype of the ‘*Dhatura* thug’, arsenic also played a key role in the cultivation of a gender-specific stereotype. Arsenic, both in the colony and the metropole, emphasised the secretive and cunning image of the woman, who employed the discreet method of poisoning her victim, in stark contrast to the hot-headed and spontaneous male, whose anger always manifested itself through physical violence.

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<sup>79</sup> See *Police Administration Report for the Lower Provinces of Bengal for the Year 1892*. See also A.H. Giles ‘Poisoners and their Craft’ in *Calcutta Review*, 81, 161 (1885: July). Notorious poisoners, Giles had stated, were mostly always of the fairer sex, p. 108

What one notices about cases of poisoning within memoirs is the recurring stereotype of the poisoner, whether domestic or the *Dhatura* thug. The regular appearance of the poisoner in various accounts written over the colonial period, demonstrates the power of the stereotype in the British imagination. Yet, it was a construction which disguised a number of very real divisions within official circles over the prevalence of the crime and the deeply divisive question of whether or not to regulate the sales of poisons. That question in turn was tied to wider imperial interests.

Whilst poisoning was a crime which could be placed firmly within the legal public sphere of the court and punishable by the laws of the colonial state, a number of other concerns would ensure that the response of the government to it would be far from a simple case of conviction and subsequent punishment. Indeed, low conviction rates would play an important role in the reluctance of the government to introduce special regulation. Indeed, whilst the poisoner was a constant presence in memoirs and official accounts of crime in India, he or she was a notably absent figure from the criminal returns. The courts of Bengal, argued the inspector general of police in 1891, were unwilling to deal with drugging cases under new rules which had been issued by the Executive Government.<sup>80</sup> This tussle between the law courts and Executive Government did not help conviction rates. Thus, in 1890 only seven out of

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<sup>80</sup> The Government of India in a Resolution of 20 February 1880 had expressed the opinion that these cases should be tried under section 394 of the Indian Penal Code rather than under section 328 of the same Code, as was the usual procedure. This was because the punishment provided by section 328 (10 years imprisonment) was not considered to act as a sufficient deterrent and also previous convictions could not be proved under Chapter XVI, of which section 328 was a part. Section 394 was considered to be more suitable because previous convictions could be proved in a case tried under Chapter XVII, which included that particular section. See *Police Administration Report for the Lower Provinces of Bengal for the Year 1891*

fourteen cases were convicted. There was no improvement a year on, with eight out of thirty cases ending in conviction.<sup>81</sup>

The preoccupation of the colonial state in gaining high conviction rates also undermined attempts made to tackle the crime under special legislation. General Charles Hervey had, over the years, pointed to the ineffectiveness of the ordinary system of law in dealing with the crime, and argued that ‘*Dhatura* thuggee’ should be dealt with using the special legislation used to exterminate the original thugs in the early nineteenth century. Hervey and his supporters insisted that there was a direct link between those engaging in crimes of robbery and the original thugs targeted in the early nineteenth century.<sup>82</sup> The solution, he continued, was to extend the approver system of the Thuggee and Dacoitie Department to the crime of professional poisoning. By doing so, cases of poisoning could be treated as a group offence rather than being labelled as individual crimes. The response of the Government of India centred around the fact that there had not been a single conviction of a ‘thug’ poisoner. Indeed, the law itself made conviction difficult, undermining Hervey’s claims of ‘intent to kill’. Section 300 of Act XLV stated that an accused could only be termed a thug and, hence an approver, if the person committing the act knew that death would ensue.<sup>83</sup> The purpose of the thug, argued the opponents of Hervey, was to kill. Intoxication, rather than death, was the purpose of the poisoners. Without successful convictions it would be impossible to apply the approver system to cases of robbery by poisoning. The strength of the approver

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<sup>81</sup> Ibid.

<sup>82</sup> There are, he argued, ‘regularly organised gangs who follow crime of robbery by administering deleterious or poisoning drugs as a profession...these poisoners are an organised band, the only difference between them and the original thugs being that drugs are used now instead of a handkerchief; both are characterised by the same disregard for human life and both have professional followers’. See *Papers Relating to the Crime of Robbery by Poisoning 1861-1878* (1880).

<sup>83</sup> See ‘Resolution of the Government of India’ in Ibid.

system lay in the fact that the original thugs were ‘a large and united nationwide gang and only required a few of the accomplices for the detection and prosecution of the whole body.’<sup>84</sup>

Robbery by poisoning, in contrast to the cult of the thugs, local governments stated, was ‘of infrequent occurrence’. As one official pointed out, the approver system was significant because it was a ‘readier and least expensive method of suppressing a large body of men by the evidence of the smallest number of accomplices.’<sup>85</sup> Gangs of poisoners were so small in number and rarely associated with each other, that to use the approver system would be pointless. As one official, though not disputing Hervey’s claims of an organised gang, pointed out ‘without an approver we cannot establish a system...there are hints of an organised gang but there is no proof or certainty, the facts being too stubborn to be got over.’<sup>86</sup>

The need to present poisoning as an ‘organised crime’ that would force the government to take action can also be seen in the debates over the control of certain poisons. Throughout the colonial period, the colonial authorities had discussed the issue of regulating the sales of poisons, thereby correcting the anomaly which had troubled the authorities over the years.<sup>87</sup> It was an issue for which there was no easy resolution, tied as it was to broader economic interests. A special investigation was conducted in 1879 by R. D. Spedding, the magistrate of Goruckpur, who stressed the urgent need to regulate white arsenic in particular, a poison used in most domestic disputes and also in cases of cattle poisoning. He, as others had before him, argued

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<sup>84</sup> Ibid.

<sup>85</sup> ‘Extract of a letter from Secretary to the Government of the North Western Provinces-No.753A, dated 13 September 1862’ in Ibid, p. 27

<sup>86</sup> A. H. Giles, ‘Poisoners and their Craft’ in *Calcutta Review* p. 108

<sup>87</sup> See *Papers Relating to the Crime of Cattle-Poisoning: Views of Local Governments on the Need or Practicality of a Law Restricting the Sale of Arsenic* (1881)

that lack of regulation had created a drug trafficking system spreading from the North-Western Provinces to Calcutta and that tracking down criminals was impossible without any regulation. In particular, the enquiry made references to the caste of *chamars*, claiming that it was this group that was largely responsible for using the poison for illegitimate purposes, primarily cattle poisoning. The officiating collector of Patna stated that if a search was to be made, ‘we would scarcely find a chamar’s house without a certain amount of arsenic in it...it is secretly given out to fellow chamars in different parts of Patna and other districts for the destruction of cattle.’<sup>88</sup> The officiating magistrate of Azimgarh, described the ‘extensive system’ of cattle poisoning in more detail, a ‘vast conspiracy involving leather merchants, buniahs, poison-distributors and the village chamars who administered the drug to the cattle...the chowkidars of villages are the ringleaders.’<sup>89</sup> Spedding, thus urged the Government of India to introduce legislation that would clamp down on the sale of the poison as well as the native agents engaged in supplying it for illegitimate purposes.

His request was not granted. The government of India of course pointed to the impracticalities of regulating a drug easily grown and available in a vast colony. As in the case of *Dhatura* thuggee, the government undermined Spedding’s claim of the existence of an ‘organised system of poisoning’, arguing that no regulation was necessary if such a system did not exist.<sup>90</sup> Furthermore, the use of arsenic by native practitioners, who pointed to the beneficial effects of the poison, was also discussed

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<sup>88</sup> ‘Officiating Collector of Patna to the Officiating Commissioner of the Patna Division, No. 159, dated Bankipore, 13 June 1872’ in *Papers Relating to the Crime of Cattle Poisoning*

<sup>89</sup> ‘Officiating Magistrate of Azimgarh to the Superintendent of Police, Benares Division, dated Azimgarh, 21<sup>st</sup> October 1873’ in *Ibid.*

<sup>90</sup> Many would point out that the numbers of poisoning by white arsenic fluctuated from province to province. The crime was a major concern in some whilst in others, arsenic was ‘little used in poisoning cases’.

in detail.<sup>91</sup> But most importantly, the decision would reflect trade interests. Spedding, in his enquiry, had consistently referred to the role of the *chamars* in using the poison to destroy cattle. But introducing regulation and controlling their movements would be detrimental to the interests of a number of groups. As Horace Cockerell, the Secretary to the Government of Bengal pointed out, the people who used the poison for the purpose of destroying cattle belonged to the same class and caste as those who required the poison for the legitimate purposes of their trade.<sup>92</sup> *Chamars* could use arsenic to poison cattle but they also required arsenic to continue their legitimate trade. Arsenic was used in the Lower Provinces of Bengal to cure hides and the hide trade in Bengal was a profitable one, for both native merchants and European firms.<sup>93</sup> Any proposal that would interfere with or tend to check such an enormous trade, argued Cockerell, should be carefully considered.<sup>94</sup> To regulate the poison would not only harm trade interests but it would also harm the livelihood of *chamars* who used the poison for legitimate purposes. To regulate, and to raise the price of arsenic in the process, would place them at such an economic disadvantage that oppression, particularly from the police, would be the only result.

Arsenic would eventually be regulated under the Poisons Act of 1904 but even that Act was framed with trade interests in mind. Following the introduction of

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<sup>91</sup> Fevers and skin diseases were cited as some of the ailments for which arsenic could be used. In the Patna district, it was used internally in asthma and chronic bronchitis, impotency and paralysis. 'Dr CR Francis, Deputy Inspector General of Hospitals, Dinajpore Circle, to the Secretary to the Inspector General of Hospitals, Indian Medical Department-No. 2359, dated Dinajpore, 19<sup>th</sup> September 1872' in *Papers Relating to the Crime of Cattle Poisoning*.

<sup>92</sup> From Horace A Cockerell, Secretary to the Government of Bengal to the Secretary to the Government of India, Home, Revenue and Agricultural Department, No.3144, File 269-42, Calcutta 28 June 1880 in 'The Use of White Arsenic for the Destruction of Cattle', Bengal Proceedings, Judicial Department, June 1880

<sup>93</sup> The total number of hides exported from Calcutta to foreign and Indian ports between 1875-1880 was 27,373,976 and the total value of the hides was Rupees. 7,02,85,791. Furthermore, a European firm of high standing would regularly send to their agent at Dinajpore a large consignment of yellow arsenic for this purpose. See *Ibid*.

<sup>94</sup> *Ibid*.

the Act, a licence was required for the sale of poisons. It was a widely criticised piece of legislation.<sup>95</sup> This was primarily because it exempted the very group which engaged in the illegitimate use of the poison from holding a licence whilst the term ‘medical practitioner’, also exempt, was dangerously wide in the native environment.<sup>96</sup> Furthermore, the act only dealt with poisons that were for sale, whilst the possession of poisons not for sale was not interfered with. Significantly, too, the Act only extended to the rural areas in cases where arsenic was sold. If poisons other than arsenic were concerned, then the Act was not applicable in rural areas, special permission being required from the Governor General. It was, as one official noted, ‘a disastrous rule...rural areas must be included because that is where the abuse prevails.’<sup>97</sup> Amidst such outcry, the framers of the Act would point out that it was always regarded as an experiment and was intentionally limited in scope.<sup>98</sup> Such a ‘general and flexible’ Act, was the only option because the colonial authorities were anxious to avoid unnecessary intervention in legitimate industries, including both indigenous medicine and trade. Due to this, it was important to ensure that the Act was as flexible as possible and ‘local courts be given the power to change the rules and adapt according to individual circumstances.’<sup>99</sup> It was eventually repealed and replaced by the Act XII of 1919, an Act designed to rectify the many limitations of the original legislation.

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<sup>95</sup> See ‘Act I of 1904 Poisons Act’ in L/PJ/6/668, File 321 for all papers and correspondence concerning the Act.

<sup>96</sup> In India, argued one official, there were hordes of uneducated quacks who could pass as medical practitioners and escape detection. See Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> See ‘Extract from the Proceedings of the Council of the Governor General of India, assembled for the purpose of making laws and Regulations under the Provisions of the Indian Councils Act, 1861 and 1892. Council meeting at Government House, Calcutta, Friday 22 January 1904’ in Ibid.

<sup>99</sup> Ibid.



The crime of poisoning fell strictly within the public legal sphere, to be punished by the colonial state. The cautious approach adopted by the state demonstrates the powerful influence of broader imperial interests. Such an approach was also adopted when crimes associated with questions of religion and morality, and those that fell within the private sphere, were brought to the attention of the authorities. Indeed, it would be these types of cases which visibly exposed the dilemmas faced by a colonial government aware that they had to publicly support the idea of a civilising mission in India, designed to improve the ‘depraved morality’ of their native subjects. For the British, however, the policy of non-interference would always be of utmost importance and the civilising mission would in comparison remain a secondary concern.

Problems occurred when crimes committed within the domestic sphere found their way into the colonial court of law. Publicly, the Indian Penal Code was designed to deal with all forms of crime, whether in the private or the public sphere. But concerns arose when officials shied away from dealing with domestic crimes, and used colonial law itself to avoid doing so. That the idea of an improved morality would always be secondary to the policy of non-interference was one thing. But for crimes to occur and for colonial law itself to be seen as contributing to the ‘depraved morality’ of the native subjects was quite another. It was too visible a reminder of the tenuous position that the British held in India – one that was ultimately dependent upon maintaining a policy of non-interference and hence protecting broader imperial interests such as trade. However, it was also equally reliant on the civilising mission, in which the law was at least seen to be improving the moral nature of their native subjects.

The attempt to keep a distance from the private sphere was beset with problems. This was demonstrated by the agitation over the Muhammadan Marriages and Divorces Act I of 1876. The aim of this legislation had been to provide a definite form of registration, a lack of which had meant that it was difficult for a court of law to successfully resolve a dispute without proof of documentation. This state of affairs had meant that Muhammadan couples had used the courts of law for their own personal agendas. It was due to the improper use of the court by the native community that the authorities decided to introduce the Act of 1876.

The Act of 1876 was designed to alleviate the difficulties faced by officials within the British court. It was a concern related to the public legal sphere but the Act by its very nature involved intervention within the private sphere. What the Act had implied was that unregistered marriages would not be valid in the British court of law. But, as pointed out by one Muhammedan official, ‘making unregistered marriages and divorces invalid in the British courts of law does not make them invalid under Muhammedan law.’<sup>100</sup> Thus, on the one hand, Muhammedan clerics protested that their religion was being interfered with. On the other, there were claims that the Act had a negative impact in that ‘individuals knowing that only registered marriages counted in the British court, could easily leave earlier unregistered marriages, which would not stand in a court of law without proof.’<sup>101</sup> The Act had been introduced purely to ease the practical difficulties faced by authorities in the British court in dealing with unregistered cases. Discussions surrounding the Act would focus on the depraved morality of the Muhammedan

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<sup>100</sup> Superintendent of Dacca Madrasa to the Magistrate of Dacca, dated 29 June 1881. See ‘Registration of Mahomedan Marriages and Divorces’ in Bengal Proceeding, Judicial Department, July 1883

<sup>101</sup> Ibid.

character. But it was also implied that the colonial policy of registering marriages, by making it easier to dispose of unregistered marriages, was itself implicated in exacerbating the depraved morality existing amongst the Muhammadan community.

There were also other instances where it was difficult for the authorities to keep the moral and legal spheres separate. This was most visibly apparent in the case of infant marriages. Infant marriage and widow remarriage were particularly prevalent amongst Hindu communities and social reformers had over the years emphasised the need to improve native morality through education. B.M. Malabari, a Parsee social reformer, had in 1884 emphasised the dangers of infant marriage and the ‘sickly, degenerate population’ that would be the product of early consummation. The emphasis was clearly upon improving the moral nature of the native population, Malabari arguing that ‘if not legal intervention, then the government should at least apply moral pressure upon native community.’<sup>102</sup> The government of India would ultimately reject the suggestions put forward by Malabari on the grounds that if ‘native practices are not in accordance with the Shastras then public opinion needs to be corrected which is *not* the business of Government...a foreign government cannot interfere in the domestic economy of our domestic institutions.’<sup>103</sup>

Clearly, there was a concerted effort by the colonial authorities to preserve the policy of non-interference in domestic personal matters. As the Officiating Secretary to the Government of India would point out, the state used a ‘common sense test’ when faced with social or religious questions. The test, he argued, is ‘Can the State give effect to its commands by the ordinary machinery at its disposal? If not’, he continued, ‘it is desirable that the State should abstain from making a rule

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<sup>102</sup> See *Papers Relating to Infant Marriage and Enforced Widowhood in India*

<sup>103</sup> Ibid.

which it cannot enforce without a departure from its usual practice or procedure.’<sup>104</sup> The problem, however, was that the ordinary machinery of law would itself ensure that colonial policy itself was implicated in social questions and indeed allowed the continuation of immoral behaviour. In a clear reference to the isolation of widows, under the Indian Penal Code, sections 341-344 and 346 stated that enforcing seclusion upon any person was an offence. To provide another example, it was pointed out that the Widows Remarriages Act XV indirectly promoted immoral behaviour. A widow would lose possession of her deceased husband’s property upon remarriage. Reasons of unchastity or immoral conduct, however, did not disqualify her from possession. Adultery and unchastity, acts of an extremely immoral nature were, it was argued, indirectly promoted by a colonial law, suggesting that it was better for a widow to be unchaste rather than remarry. The law again was implicated in promoting immoral behaviour and this was, it was argued, an anomaly that ‘must be removed.’<sup>105</sup> Thus, as much as the government tried to maintain a distance from questions of morality, it was faced with a situation where not only did colonial law visibly undermine the civilising mission but it was indirectly responsible for the ‘depraved morality’ exhibited by the native community.

This was also evident in what came to be known as the case of Luchmin. This was a case in which the colonial law and the civilising mission most visibly clashed. Luchmin was a fourteen-year-old girl who, in her own words, was a widow who had been sold by her immoral mother to a man by the name of Radha Kissen. Having

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<sup>104</sup> ‘Extract from the Proceedings of the Government of India, Home Department (Public), dated Simla, 8<sup>th</sup> October 1886’ in *Papers Relating to Infant Marriage and Enforced Widowhood in India*

<sup>105</sup> ‘Kerykolitany versus Moneeramkolita (Bengal Law Reports, volume XIII) quoted in ‘C Subbaraya Aiyar, 3<sup>rd</sup> Judge Appellate Court, Ernacollum to the Chief Secretary to the Government of Madras, dated Ernacollum, 5<sup>th</sup> January 1885’ in *Papers Relating to Infant Marriage and Enforced Widowhood in India*

escaped to the Christian mission house, and having converted to Christianity, her case would rest on three points. As a widow she could not remarry; that as she was over the age of fourteen, she was her own mistress; finally, her mother had sold her for immoral purposes and Kissen was keeping her as 'his prostitute'. Radha Kissen issued court proceedings at the local police station accusing a member of the Mission House for illegally detaining 'his wife Luchmin' for the purpose of converting her to another faith. Magistrate Quinn, subsequently, ordered that Miss Abraham, who took in Luchmin at the Mission House, be arrested under section 155 and Luchmin be returned to her husband.

The case of Luchmin is interesting in that it demonstrates the extent to which the authorities were prepared to go to avoid handling matters of a domestic nature. Magistrate Quinn, it was found, had completely reinterpreted section 155 so that the case came within his jurisdiction. As a result, Miss Abraham argued in her defence, that Magistrate Quinn, through this reinterpretation of section 155, had 'completely reclassified my Zennana mission as a house of ill-fame and disrepute!'<sup>106</sup> The case received much public attention, even being the subject of debate in the House of Lords. Supporters of Christian reform repeatedly referred to the 'sacrifice of a Christian maiden by an official acting in the name of a Christian Queen' and the law as an 'infernal machinery of oppression.'<sup>107</sup> This passionate plea had been in response to Miss Abraham taking her case to the High Court, only to be told by Justices Mitter and Macpherson that the 'wrong interpretation of section 155 was a slight error on the part of Quinn...to forcibly take a child from her legal guardian can only be justified if it could be proved that the guardians were immoral which in this case

<sup>106</sup> 'The Patna Mission Case' in L/PJ/6/241, Files 1872, 1873 and 1879

<sup>107</sup> 'A Terrible Crime Under British Rule in India: A Complete History of the Patna Case, reprinted with additions, from the Banner of Asia pp.1-15' in L/PJ/6/252, File 835

cannot be established.<sup>108</sup> Whilst Justices Mitter and Macpherson based their explanation on legal technicalities, the debate in the House of Lords interpreted the case in more blunt terms. It was stated that the House must remember that ‘Indian Magistrates are bound to administer the law as it is, and the Government of her Majesty is under the most solemn obligations to respect religious and social customs of the Hindoos and all other classes of Her Majesty’s subjects in India.’<sup>109</sup>

What the case of Luchmin, and indeed the arguments suggested by B.M. Malabari, demonstrates is the careful reinterpretation of events to meet need and circumstance. Malabari’s recommendations for intervention were countered by claims that Hindu ideas of moral and immoral behaviour differed from the colonial rulers, and as a result, non-intervention in the domestic sphere was the desired course of action.

The Age of Consent controversy led, to an extent, to a reversal of this argument.<sup>110</sup> This particular event is often regarded as a defining point in the development of nationalism in the nineteenth century, and indeed, has received much scholarly attention. As a number of scholars have convincingly noted, it was not the seriousness of a crime resulting in the death of a child that was the focal point of discussion in this particular controversy. Rather a number of interests were at stake. For the Hindus, as Tanika Sarkar has pointed out, the death of Phulmoni was a defining point, when the protection of the personal domestic sphere, and of the

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<sup>108</sup> ‘Letter to the Right Honourable Viscount Cross, Her Majesty’s Secretary of State for India from Landsowne from CA Elliott, dated 18 May 1889, Government of India, Home Department, Judicial’ in L/PJ/6/253, File 977

<sup>109</sup> ‘Question and Answer Session on the 10<sup>th</sup> December concerning the Possession of Native Christian Girls in India’ in L/PJ/6/241, File 1897.

<sup>110</sup> That controversy arose following the rape of twelve year old Phulmoni by her thirty five year old husband Hari Mohun Moitee. According to the law, in the form of section 375, sexual intercourse by a man with his own wife, the wife not being under ten years old, was not rape. Thus, Moitee was convicted of negligence, not rape. The incident led to a bill in which it was proposed to increase the age of consummation from ten to twelve.

female within it, became a focal point in the development of nationalist politics.<sup>111</sup> It was a form of nationalism which, as Mrinilini Sinha has argued, for the Hindu male served as a platform upon which the notion of masculinity was rigidly defined.<sup>112</sup> For the British, it was, as Himani Bannerjee has noted, ‘not a question of consent but of control of the female body, of determining when her body would be ready to meet the needs of her husband.’<sup>113</sup> Furthermore, Bannerjee continues, ‘the death of Phulmoni, produced legally through marital rape, became an occasion for legitimation, that is, expansion of hegemony.’<sup>114</sup>

One can also place emphasis upon the ease with which law and ideas about religion could be carefully reinterpreted to accommodate changing circumstance. Although, in effect, the bill as passed was a dead letter, emphasising the desire to maintain a distance from the domestic sphere, what is interesting to note is the way in which religion was now used to justify their initial intervention.<sup>115</sup> The colonial authorities would attempt to explain the necessity of intervention via the bill. The Proclamation of 1858, so often relied on as the Act that enabled the colonial authorities to evade handling cases of a domestic sphere, was in the case of Phulmoni, undermined, with one magistrate arguing that the ‘Government of India has at all times manifested a just attention to the religious opinions and customs of the Natives, so far as is compatible with the paramount claims of humanity and

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<sup>111</sup> Tanika Sarkar, ‘Rhetoric Against Age of Consent: Resisting Colonial Reason and Death of a Child Wife’ in *Economic and Political Weekly*, Volume 28, Number 36, 4 Sept 1993

<sup>112</sup> Mrinilini Sinha, *Colonial Masculinity: The ‘Manly Englishman’ and the Effeminate Bengali in the Nineteenth Century* (Manchester: Manchester University Press, 1995)

<sup>113</sup> Himani Bannerjee, ‘Age of Consent and Hegemonic Social Reform’ in Himani Bannerjee. *Inventing Subjects: Studies in Hegemony, Patriarchy and Colonialism* (New Delhi: Tulika Books, 2001), p. 94

<sup>114</sup> *Ibid.*

<sup>115</sup> Intervention had led to an outcry from orthodox sections of the Hindu community who claimed that the proposal threatened their religious ceremony of Garbhadhan, according to which a marriage had to be consummated following the first menses.

justice...respect for religion will always be observed where religious doctrines do not compel criminal results.’<sup>116</sup>

The Age of Consent debate was an event that brought various concerns and anxieties of the colonial government to the fore. Chief amongst these was the fear that the colonial law, in the form of section 375, suggested that a husband could demand his marital rights from his wife.<sup>117</sup> The colonial authorities, argued the Governor General, were faced with the dilemma ‘of either protecting these little girls *or* disregarding the religious argument.’<sup>118</sup> The religious argument was not completely disregarded but what the authorities did do was to depend on interpretations which undermined the religious argument put forward by the opponents of the bill. Thus, argued one native social reformer, the religious texts of the Hindus stated that consummation could not occur before puberty was reached, which according to the texts occurred at the age of twelve. The low limit sanctioned by the Indian Penal Code, he continued, ‘has actually sanctioned a very retrograde view of the ancient law of the country and of an improved practice...therefore section 375 is grossly wrong on the grounds of principle and lower than what Smriti texts and medical texts sanctioned.’<sup>119</sup> Indeed, it was argued that there was no intervention on the part of the state. Premature intercourse with female children was already an

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<sup>116</sup> ‘Mr Quinn, Commissioner of Bhagalpore, Extract from the Proceedings of the Council of the Governor General of India, Thursday 19<sup>th</sup> March 1891’ in *The Age of Consent of Controversy: Papers Relative to the Bill to Amend the Indian Penal Code and the Criminal Code of Procedure, 1882* L/PJ/5/54

<sup>117</sup> One memorial would emphasise the anomaly of a law in which a female under the age of twelve could ‘not validly consent to being robbed because she could not understand the nature or consequences of the act – but she could consent to rape! See ‘Memorial of certain Women in India to her Gracious Majesty Queen Victoria, Empress of India’ in *Ibid*

<sup>118</sup> Extract from the Proceedings of the Council of the Governor General of India, Thursday 19<sup>th</sup> March 1891 in *Ibid*

<sup>119</sup> ‘Native Gentlemen of Poona to the Secretary to Government, Legislative Department, dated August 1890 Number 8’ in *Ibid*



offence according to the law, the aim of the proposed bill simply being to improve and correct the current law and turn a 'vice into a crime.'<sup>120</sup>

What one notices in the debate over the Age of Consent controversy is the emphasis placed upon the interpretation of the religious text belonging to the Hindu community. What one also notices is the role of the authorities in interpreting and reinterpreting religious texts according to need. Indeed, various authorities would offer vastly differing opinions. To some, the Shastras were sacred and should not be interfered with whilst others argued that women had possessed more freedom in the ancient Vedic period, meaning that the Shastric rules were more recent and could not be classified as a religious practice. The diversity of opinion led to many local authorities expressing the view that it was unwise to interfere in socio-religious questions. When such questions did demand the attention of the authorities, they had to carefully undermine the religious aspect. Thus, the death of Phulmoni, and the subsequent discussion of the high number of female deaths resulting from forcible intercourse, had led to an interpretation of the Shastras in such a way that the religious text condemned premature consummation because it would create a sickly, degenerate population. It was due to the careful but constant emphasis upon this, and upon the laws of Manu condemning premature consummation, that the change in law could be implemented.

Ultimately the change in legislation which increased the age of consummation had little effect. But what the controversy did demonstrate was the way in which the colonial state could interpret and reinterpret according to need and circumstance. Luchmin, the proposals of Malabari and other cases of a domestic nature were undermined by emphasising the importance of the policy of non-

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<sup>120</sup> Ibid

intervention. The case of Phulmonee would to an extent reverse the argument. But even in that case it was not the committal of an offence, and the sole authority of the colonial state to punish it according to law, that was the main point of contention. It was the discussion centred around the female body, discussions about the relevance and indeed importance of the Garbhadhan ceremony in the Shastras, discussions designed to demonstrate to the Hindu community, that the law of the state was no threat to their personal sphere, that were a central feature of the controversy. Thus, the controversy, and the cases that arose in the years before it, emphasised that in the tussle between the law of the colonial state and the personal ‘moral’ sphere of the colonised subjects, the former would be moulded according to the needs of the latter, thereby demonstrating the power of local agency to subvert broader imperial agendas.

### **2.3 Conclusion**

This chapter began with the predicament voiced by a crime writer who questioned the role of the law in bettering the moral nature of its subjects. In the context of British India, a land in which the all-important policy of non-interference coexisted alongside the ‘civilising mission’, the disparity between the two pillars of the civilising mission-law and morality- became sharply visible. The aim to improve the morality of the colonised subjects was always a secondary concern when compared to the policy of non-intervention. This was recognised and accepted by the colonial authorities. The unwillingness to get involved in the affairs of a village mirrored the inability of the state to penetrate the interior. Complete control was never possible,

the authorities responding only when ordinary crime had reached unacceptable levels.

The fear of ‘mass rebellion’ and controlling groups was always the central focus of the colonial government. This concern was also apparent in the debates surrounding hook-swinging in 1892, or what the colonial authorities referred to as ‘self torture’.<sup>121</sup> Discussions on whether to ban the practice or not focused on the threats that a ban would pose to the religious liberties of the people.<sup>122</sup> Yet, crucially, whilst it was noted that hook-swinging was primarily practised by lower classes and was not recognised by the Hindu Shastras, a text that would be a focal point in attempts to justify both intervention and non-intervention, it was concluded that any ban would be a dangerous move. Dabbling with any socio-religious topic, particularly in the aftermath of the Age of Consent controversy, would, it was feared, lead to mass revolt, the avoidance of which had always been a primary concern of the colonial government. The fact that the authorities were interested in banning only public displays of hook-swinging that would attract large numbers of crowds further demonstrates that the control of specific threats was always going to be the overriding concern for the colonial authorities.

The importance of broader imperial interests would always require the law of the state to be of a somewhat flexible nature, ready to be moulded according to need and circumstance. Thus, whilst in the early days of colonial rule, William Sleeman had successfully employed a number of both scientific and legal techniques,

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<sup>121</sup> See ‘Hook Swinging at Religious Festivals in India’ in L/PJ/6/332, File 1912

<sup>122</sup> Banning these practices officially through the law, it was argued, would place houseless wanderers at a huge disadvantage. Having no home to practise their ‘religious rites’ in private, they were forced to practise in public. Any ban on public displays would deprive them of their rights. See ‘From the Acting Headquarters Deputy Collector, Tinnevely, to the Collector and DM, Tinnevely, dated 30 Sept 1893, No. 679 (Confidential)’, in The Suppression of Hookswinging, L/PJ/6/371, File 635

themselves a product of British anxieties about the colony, to create a 'cult' which required an 'extralegal' response, dealing with the professional poisoner of the late nineteenth century, proved to be a much more difficult process. Broader interests, involving those of both European firms and local rural communities, would undermine calls to deal with the crime in the same manner as Sleeman had dealt with the thugs. Future regulation would reflect the reluctance of the authorities to upset the status quo.

The cautious approach adopted by the authorities was also reflected in their handling of 'social crime'. In response to the proposals put forward by B.M. Malabari, the Acting Under Secretary to the Government of Bombay had significantly pointed out that whilst *sati* and infanticide, were 'dealt with as crimes and thus stood on a different footing...no amount of appeal will clothe the question of widow marriage as such with a criminal aspect.'<sup>123</sup> This assertion is important in two respects. Firstly, there is the direct recognition that a criminal element had to be present before the government could interfere via legislation. Secondly, is the implication that the government itself could transform an act into a crime, and make it punishable by the law of the colonial state, according to need and circumstance. Luchmin was forcibly returned to her husband because Magistrate Quinn was able to reinterpret the law in a way that maintained the policy of non-interference. The proposals of Malabari were rejected on the grounds that they were counter to colonial policy. The Age of Consent controversy led to a cautious reinterpretation of the religious texts of the Hindus, by which the authorities could, on the one hand

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<sup>123</sup> 'K.C. Bedarkar, Acting Under Secretary to the Government of Bombay, 15 December 1884' in Ibid.

undermine the religious scriptures, and on the other emphasise the criminal aspect of the case.

Moulding the law according to broader interests, however, was not without its problems. Concerns arose when cases came before the colonial authorities which suggested that the law itself was contributing to the state of immorality amongst the native population. This was clearly apparent in the account of C.M. Edwards, who whilst describing the transformation of the criminal tribes into law-abiding, disciplined, orderly citizens, also noted that there was still a distinct lack of morality. He also noted that members of the tribes thought that the government itself was to blame for this state of affairs, a woman informing him that ‘in the old days marriage cost Rs. 300 then Sahib said no marriage must cost more than Rs.30 so men cannot acquire large sums of money...who can expect us to be bound by a Rs. 30 marriage?’<sup>124</sup> Whilst it could be argued that Edwards was simply strengthening the stereotype, that of an immoral community which always required the assistance of the colonial rulers, other instances would emphasise similar concerns. The Muhammedan Marriages Act as well as legislation regarding Hindu widows, for instance, reflected an anxiety that colonial rule was itself implicated in creating the ‘depraved immorality’ of the colonised population.

What these various dilemmas and broader interests, in which the role of the law was adapted according to the needs of different groups, led to was the strengthening of a multilayered stereotype of crime and the criminal in India. For instance, the difficulties in bringing the professional poisoner within the confines of legislation were compensated by the stereotype which is visible in a number of colonial memoirs. What the colonial authorities placed emphasis upon was the

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<sup>124</sup> C. M. Edwards, *The Criminal Tribes of India* (London: S.P.G. 1922), p. 22

invisibility of the professional poisoner, which would be presented as proof of the potential threat he posed to unsuspecting victims. Through this process, the idea of the *Dhatura* thug would emerge, and was a constant presence in the memoirs. What would be constantly emphasised was that his very invisibility demanded British presence in India. This stereotype was a powerful tool by which it could simultaneously assume and avoid responsibility. On the one hand, law was the gift that the British presented to a previously 'lawless' land. On the other, the native of India possessed a 'flawed' native morality and until this morality was improved, the law of the colonial state would be ineffective. The dangers of this stereotype were, however, pointed out by some. The reviewer of one particular 'authoritative' account of crime in India, produced following the rise of revolutionary crime in the colony, argued that painting the native character in too negative a light would only further strain the relationship between ruler and ruled, leading to disaffected natives from engaging in further acts of disloyalty towards the colonial government.<sup>125</sup>

The circumstances which demanded that the British implement a legal structure that was flexible in nature meant that the legal institutions of the colonial state would be employed in very specific ways by the local community. Indeed, the fluid nature of colonial law itself was indeed taken advantage of by Luchmin, who combined an orthodox Hindu view – that as a widow, she could not remarry – with a foreign colonial law, which considered a female over fourteen 'as her own mistress.' That she was able to add 'her immoral' mother into her account made her the ideal candidate for a civilising mission which portrayed the native subject as one who required protection of the benevolent British authorities from 'physical and moral

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<sup>125</sup> Cecil Cowper, 'Review of *Cameos of Indian Crime* by H Hervey' in *Academy and Literature* (1912)

ruin'. That they chose to do otherwise, and the manner in which it was done, demonstrates the powerful influence of broader interests in the shaping and reshaping of views about colonial law.

### Chapter Three: 'Unofficial' Local Agencies versus the 'Official' Policing Network: The *Chowkidar*, the *Panchayat* and the State, 1870-1914

Sir Lawrence informed me that there are only three classes of officials (or ranks I should say) who have any power in India – the Tehsildar, the District Officer and the Governor General. I told him that he had omitted one: the village watchman.<sup>1</sup>

The power of the village watchman, continued Legislative Council Member George Henry Mildmay Ricketts, was established through an 'acquisition of knowledge gained from mixing amongst the people in town and country.'<sup>2</sup> The local population, in many instances, were unwilling to officially report cases to the regular police, thereby creating an absence of official authority in the countryside. The employment of an alternative agency to acquire knowledge of criminal affairs, thus, was necessary. It was the village watchman, or *chowkidar*, who, with his direct access to the customs and habits of local communities to which he himself belonged, could operate as the crucial 'link' between the rural village and the district police. By redirecting information, primarily of a criminal nature, from the interior to the district headquarters, he was in effect the eyes and ears of the government, the 'very foundation of the police force.'<sup>3</sup> Acting as the first point of contact for members of the local community, how this rural agent handled their complaint could have a direct impact upon the use they made of colonial institutions such as the police and the courts of law. In addition to these duties, the *chowkidar* was also the agent upon whom the government ultimately depended for information relating to district matters. It was he who was held responsible for the reporting of births and deaths,

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<sup>1</sup> George Henry Mildmay Ricketts, *Extracts from the diary of a Bengal Civilian in 1857-59: and further notes of service and experiences from 1849 to 1879 in Bengal, Punjab and the United Provinces* (1913), p. 109

<sup>2</sup> Ibid.

<sup>3</sup> L.M. Morshead, *Police Administration Report for the Lower Provinces of Bengal for the Year 1909*



diagnosis in the cases of death and all other ‘vital statistics’. Thus, the significance of the watchman as a vital source of information within the colonial network was clearly not lost on Ricketts.

The purpose of this chapter is twofold. Firstly, it is to examine the ambiguous role of the *chowkidar* within the chain of criminal administration. Secondly, the aim is to examine the local influences which determined how he operated within the colonial network of control. The clash between the requirements of the colonial state and the practical needs of the locality form a central part of this chapter. Section one of this chapter discusses the impact of Act (VI) of 1870, the purpose of which was to transform the *chowkidar* into a respectable and trusted agent within the chain of criminal administration. Section two discusses the impact of broader imperial objectives upon the working of Act (VI) of 1870. The third and final section examines why the *panchayat*, responsible for ensuring that the conditions of the Act were complied with in the interior districts, operated in ways that were at odds with the requirements of the government.

The initial exclusion of the watchman in the opening extract above reveals a long standing anomaly. Despite his central role within the network, he was never designated as an ‘official’ member of the police, being appointed instead as a supplementary agent. By law he was under the control of the sub-inspector, yet in practice he still served the village landlord. What concerned the executive authorities about this system in which the *chowkidar* served two masters – the police and the local *zamindar* – was the ability of the latter to disrupt the ‘flow’ of information between the *chowkidar* and the police. Moreover, the post of a *chowkidar* was also very far from being a respectable one. It was occupied by those from lower caste

communities such as the Harees, Baghdees, Dusads and Domes, castes considered so inferior that they were ‘employed as scavengers and other such like degrading offices...no Hindoo native caste would even touch them.’<sup>4</sup> There was also no uniform system of payment with *chowkidars* paid either in cash, kind or rent-free land. Wages were insufficient, paid irregularly or in arrears and rent-free land was often inferior in quality. As a direct result, argued officials, the watchman engaged in the very activities which he was supposed to prevent. The *chowkidars*, described the Judge of Cuttack in 1838, were ‘employed during the day to assist the Zemindar in collecting his rents, and at night they act as the agents of the notorious characters to point out where property is to be found.’<sup>5</sup> In 1856 the Lieutenant Governor of Bengal concluded that ‘they are all, or are linked to, thieves or robbers...when anyone is robbed in a village the first person suspected will be the village watchman.’<sup>6</sup> The *real* detective of the country, the ‘entire backbone of the system’, was also considered to be a thief amongst thieves, a low caste, low paid and badly clothed member of the community often treated with disdain. Indeed, the rather sarcastic referral to the watchman as ‘that wonderful person at the bottom end of the scale’<sup>7</sup> in one account was treated as confirmation that for ‘all practical purposes of Police the watchman is utterly useless.’<sup>8</sup>

Considered within this context, it can be understood why the rather ‘undeserving’ *chowkidar* is excluded from a list including highly respected figures such as the Governor General. For Ricketts and his contemporaries the key concern

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<sup>4</sup> *Police (Bird) Committee Report* (1838), p. 17

<sup>5</sup> Anon, ‘The Village Watch in Bengal: Or a Century of Abortive Reform’ in *Calcutta Review*, (1885), p.109

<sup>6</sup> *Ibid*, p. 112

<sup>7</sup> John Henry Tull Walsh, *A History of Murshidabad District, Bengal* (London: Jarrold & Sons, 1902), p. 32

<sup>8</sup> *Police (Bird) Committee Report* (1838), p. 14

was to place this rural agent on a more respectable footing and transform him into a well ordered and established 'visible' figure whilst still preserving his place amongst the people. Such reform would require the recognition of, and solution to, dilemmas that had 'remained unsolved for the past two generations.'<sup>9</sup> How to transform a rural agent, independent from the centralised police force, into a 'well respected' and 'well established' unofficial officer *without* removing him from the village community, was one such dilemma. How to mould traditional village agencies supporting the *chowkidar* in ways that were conducive to state policy was the other.

The district authorities seemed to have found the solution through the implementation of Act (VI) of 1870, the purpose of which was to provide an agency which could assist the police by 'passing on all kinds of information and thus indirectly secure the better administration of the country in improving the position of the village *chowkidar*.'<sup>10</sup> Central to the act was the belief that payment in land or kind only served to ensure *chowkidari* allegiance to the *zamindar*. What was needed instead was a regular, adequate cash salary which resulted in punctual reporting and the better surveillance of criminals. The traditional institution of the village *panchayat*, an informal tribunal readjusted to meet colonial requirements, would act as the agency assisting the police. A special tax would be extracted from the community to pay the salary of the *chowkidar* and it was the duty of this agency to collect this tax and ensure the regular and prompt payment of the *chowkidar*.<sup>11</sup> Regular payment, it was felt, would improve the condition and status of the

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<sup>9</sup> D J McNeile, *Report on the Village Watch of the Lower Provinces of Bengal*, p. 255

<sup>10</sup> 'Statement of Object and Reasons for Acts Passed in 1870' in L/PJ/5/105

<sup>11</sup> This agency was to consist of no less than three and no more than seven members. These members were to include those involved in trade in their village, or who 'were the holders or proprietors of land therein, or the local agents of such proprietors or holders'. The contribution was fixed at four rupees. See *Ibid*.

*chowkidar*, enabling him to enthusiastically assist the *thana* police. Furthermore, in contrast to previous legislation, the Act provided a specific procedure by which the magistrate could enforce the payment of the *chowkidari* salary. The *panchayat*, it was believed, would thus secure the elevation of this rural agent from despised to distinguished agent and strengthen the connection between the rural *chowkidar* and the district police. Self-governance was another key aspect of the Act. Paying for their own protection and selecting members of the *panchayat* were regarded by the state as steps in restoring the *chowkidar* as a servant of the village and not the landlord. Significantly, the police, whom the authorities believed were extremely unpopular with the local populace, were not to interfere in this exercise in self-governance which would be in ‘accordance with the traditions and customs of the Indian people.’<sup>12</sup> This exercise set the tone for developments which took place a decade later, with the colonial authorities attempting more vigorously to put the concept of local self-government into practice.<sup>13</sup> Yet the development of this self-governance was very much dependent upon the specific needs and requirements of the state rather than the rural community. Control ‘over their own affairs’, in other words, was closely followed by a compulsory set of rules and procedures, as well as enforced pay and official interference.

The role of local level agencies within the colonial network of control has been the subject of much examination. Basudeb Chattopadhyah, Chittabrata Palit and Ranjan Chakrabarti in their respective studies have examined the fragile relationship between rural networks and the official network of control in early nineteenth

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<sup>12</sup> Reverend James Long, *Village Communities In Russia & India* (Calcutta, 1870), p. 19

<sup>13</sup> These efforts resulted in the introduction of the Local Self Government Act of 1885 and the Village Self Government Act of 1919. Both of these acts, along with the Act of 1870, were considered as significant turning points in attempts by the colonial state to develop both rural policing and the municipal government in the interior districts.

century Bengal.<sup>14</sup> The conflicting demands made upon the *chowkidar* is also emphasised in these studies. Furthermore, Anand Yang has argued that collaboration with local level agencies, rather than complete control of these agencies, reflected the limitations of the network of control throughout the period of colonial rule in India.<sup>15</sup> As insightful as these studies are, what is missing is a closer examination of the ways in which colonial law made the fragile relationship even more visible in the period following Crown control in 1858. For instance, as the second section of this chapter plans to demonstrate, the Criminal Code of Procedure itself would further contribute to the uncertainty surrounding the role of the *chowkidar* within the chain of criminal administration. Furthermore, the practical difficulties experienced by the *panchayats* in adapting to self-governance, as defined by the colonial state, requires further examination. By examining these issues, the intention is to highlight the limitations of the official network within which local, more informal groups were forced to operate and how this ‘clash’ of ideals caused local agencies to act in ways widely at variance with the requirements of the Act of 1870 and subsequent legislation.

### 3.1 The Impact of Act (VI) of 1870

The progress of Act (VI) of 1870 is well documented in the police administration reports for the Lower Provinces of Bengal. Indeed, with the legislation being a product of many years of intense debate and discussion, the colonial authorities were eager to emphasise the positive impact it had on strengthening communications between the *chowkidar* and the police as well as improvements in his condition and

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<sup>14</sup> Basudeb Chattopadhyay, *Crime & Control in Early Colonial Bengal 1770-1860*, Ranjan Chakrabarti., *Terror, Crime and Punishment* and Chittabrata Palit. *Tensions in Bengal Rural Society*

<sup>15</sup> Anand Yang, *The Limited Raj: Agrarian Relations in Colonial India, Sarun District 1793-1920* (California: University of California Press, 1989)

performance. Certainly, the instances quoted within the administration reports suggest that the Act was having the desired effect. The experiment was particularly successful in the Rajshaye division, where the Act was extended to no less than 3176 villages.<sup>16</sup> In this division, the inspector general of police reported that the *chowkidars* were ‘energetic in keeping watch than before, cases were being reported more punctually and the chowkidar was now attending the thana more regularly.’<sup>17</sup> He went on to report a decrease in cattle theft and housebreaking due to the ‘*chowkidar*’s watchfulness’ in 1877 whilst in the Rungpore district of the division, he observed that ‘where a happy selection of the panchayat is made, the *chowkidars* are a useful body and keep the *thana* police informed of all matters in their *elakas*.’<sup>18</sup> Similarly, in Dinajpore, the Act had been introduced in 847 villages with success and not used for *panchayati* ends.<sup>19</sup> Elsewhere in the Sarun district of Patna the ‘chowkidar could complain now to the Magistrate who would subsequently release an order of payment to be made within seven days.’<sup>20</sup>

It was further stated that whilst in 1894 fifty three percent of *chowkidars* were under the provisions of this Act, by 1904 this figure had increased to ninety three percent, thus demonstrating a ‘considerable advance within the last thirty five years, with the force being more disciplined under the Act and as a result no longer stigmatised by active criminal tendencies.’<sup>21</sup> They were better clothed, better disciplined and were required to take part in regular parades at the local police

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<sup>16</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1873*

<sup>17</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1879*

<sup>18</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1878*

<sup>19</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1879*

<sup>20</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1877*

<sup>21</sup> Henry Wheeler *Final Report on Village Police* (1907)

station.<sup>22</sup> The Indian Police Commission also observed in 1902 that ‘where the responsibility of village authorities is enforced and their services utilised, their cooperation is of immense value.’<sup>23</sup> Furthermore, it was found that following the establishment of the *daffadar* in 1904, or the officer who was to supervise the *chowkidar* and report back to the regular police, there were some improvements. Thus, in 1904, in Backergunge the *daffadar* and *chowkidar* were found to ‘be good value in the detection of crime, prevention of breaches of the peace and the arrest of absconders.’<sup>24</sup> In Faridpur, it was claimed that within each union, *chowkidars* and *daffadars* were responsible as a body for the crime of the entire union which had resulted in a great decrease in riots and thefts.<sup>25</sup>

What is striking about these instances of ‘improvement’ is the rarity with which they occur and the conditions upon which they are dependent. For the system only ‘worked well’ *if* there was some form of enforcement from the district authorities or *if* the village agencies were in agreement. The *chowkidar* could complain to the magistrate but instances are never provided of any complaint actually being made. Where the Act did meet with success, it was still applied to the rural scene in ways that undermined the regulations set by the authorities. In Rajshahye, for instance, it was discovered that the success reported within that district had been achieved ‘without a single provision of the Act being attended to.’<sup>26</sup> Upon closer inspection of the accounts, the inspector general of police had found that *chowkidars* were ‘quite of the old style...in one case the chowkidar was twelve

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<sup>22</sup> This replaced the ‘vile dress’ of the chowkidar, ‘with the loin cloth tucked up under his legs with a piece of cloth wrapped jauntily round his head and a waistband to carry a weapon of sorts.’ See Bart Charles Parry Hobhouse, *Some account of the family of Hobhouse, and reminiscences* (Leicester: Johnson, Wykes & Co, 1909), pp. 193-199

<sup>23</sup> *Indian Police Commission Report of 1902*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1879*

months in arrears and the members of the panchayat seemed to know or care little about the matter.<sup>27</sup> Indeed, the conduct of the *panchayat* was one cause for concern. Required to include educated and respected members, in actual fact the *panchayat* was formed of illiterate villagers who ‘did not collect the tax in advance or realise arrears from defaulters and prepared false statements of collections’.<sup>28</sup> Within a year of it being introduced in nineteen villages within the Bheerbhoom district, one of the members of the *panchayat* was convicted of embezzlement whilst in Tippera in 1878, the *panchayat* were making illegal deductions from the wage of the *chowkidar*. The district superintendent of police for the Hooghly division in 1884 found that where accounts of the *panchayat* were kept, they were only kept for the ‘edification of inspecting officers, the real *‘khasra jumma karch’* (account file) never being produced.’<sup>29</sup>

Most importantly, the *panchayat* failed to comply with the underlying principles of the Act. The *chowkidar* did not receive a regular, legitimate wage nor was crime reported to the *thana* police. It was the concealment, as opposed to the reporting, of crime that raised serious concerns. Rather than strengthen the relationship between the *chowkidar* and the police, it was found on many occasions that the *panchayat* actually obstructed the reporting of cases between the two offices and in some instances engaged in criminal activity themselves. In Serajgunj, a particular rape case was recorded within the reports. The father of the victim wished her to marry a certain individual whilst the *panchayat* of the village demanded that she be married to another. At the instigation of the *panchayat*, the accused, six in number, ‘removed the wife and two daughters and raped them...all six persons were

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<sup>27</sup> ‘The Bengal Police’ in *Calcutta Review*, volume 59, (1874), p. 132

<sup>28</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1875*

<sup>29</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1884*



sent up for trial and the case was pending.<sup>30</sup> In Faridpur, to offer another example, in one case ‘the accused, owing to some land disputes, carried away the wife of the complainant to a jute field, and ravished her.’<sup>31</sup> The rural police, it was found, tried to ‘hush up the matter’ and as a result were prosecuted. Similarly, in the case of a girl murdered by her mother-in-law in the Dacca division, ‘money flowed freely. Her skull had proved to be fracturous but the chowkidar and the panchayat had been silenced in the first instance and practically the whole village said she died of dysentery.’<sup>32</sup>

Attempts by the government to raise the condition and status of the *chowkidar* – another important aspect of the Act – were also futile. By the turn of the century, village watchmen still continued to be drawn from the lower castes.<sup>33</sup> They were wanting in intelligence, interest and activity.<sup>34</sup> With higher castes rejecting such a post, authorities by 1902 had concluded that lower castes, even those with criminal tendencies, were at least obedient and subservient whereas higher castes would never do any work.<sup>35</sup> Furthermore, the order to prohibit employment of *chowkidars* on menial employment had no impact. The district superintendent of Burdwan noticed the practice of employing *chowkidars* to carry dead bodies for post-mortem examination and burial.<sup>36</sup> In the district of Gaya, a magistrate found the *zamindar* employing the *chowkidar* on menial service. One court had even passed a decree

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<sup>30</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1901*

<sup>31</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1900*

<sup>32</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1877*

<sup>33</sup> In many districts, *Bagdis*, *Domes* and *Haris* – the lowest stratum of the semi original community – were employed as *chowkidars* whereas in Dharbhanga, Patna Division, the *chowkidari* force included men from the *Dosadh* community. Many *chowkidars* belonged to the criminal classes. See *Reports on the Administration of the Police in the Lower Provinces of Bengal 1870-1915*

<sup>34</sup> See Clive Dewey, ‘*Patwari and Chaukidar: Subordinate Officials and the Reliability of India’s Agricultural Statistics*’ in Clive Dewey and A.G. Hopkins (eds). *The Imperial Impact in Africa and South Asia* (London: Athlone Press for the Institute of Commonwealth Studies, 1979) pp. 280-314

<sup>35</sup> See *Indian Police Commission 1902-03*

<sup>36</sup> *Report on the Administration of Police in the Lower Provinces of Bengal for the Year 1894*

against a *chowkidar* for money damages because he ‘had declined to carry the suitcase or luggage of a zamindar.’<sup>37</sup> Even members of the regular force employed the watchman for similar purposes. In Ranchi, for example, the sub-inspector of one *thana* was dismissed for employing a *chowkidar* as a syce and then bringing false charges against him whilst the magistrate of Murshidabad stated that the ‘chowkidars are the slaves of the police officers in the thana and the mufassil...the chowkidars are simply luggage bearers of constables and head constables, drawers of water and grasscutters.’<sup>38</sup>

The *chowkidar*, concluded one official, ‘still holds an inferior position, drawn as a rule from menial castes, who lives on the outskirts of the village. Some of his duties as general servant of the community are so degrading that the doors of village society are shut against him.’<sup>39</sup> The *Chowkidari* Reward Fund was introduced with the intention of raising the morale of the force yet *chowkidars* still failed to receive any remuneration for good service. Indeed, the manner in which the fund was utilised would only increase the fragility of the system.<sup>40</sup> By 1911, forty years after the Act was first enacted, the average wage of a *chowkidar* was still only four rupees and the wages of unskilled labour considerably higher.<sup>41</sup> There were numerous instances where in large villages not a single man would come forward for a *chowkidar*’s post. Those individuals who were appointed as *chowkidars* were indifferent to their posts. Even the *daffadar*, through whom the *daroga* could keep in touch with the

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<sup>37</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1894*

<sup>38</sup> ‘Council Proceedings for the Amendment of Act (VI) of 1870’ in L/PJ/6/335, File 2150, p. 122

<sup>39</sup> John Matthai, *Village Government in British India* (London: Fisher Unwin, 1915), p. 90

<sup>40</sup> Officials did not fail to notice the huge variances between rewards and punishment. Whilst the number of punishments was decreasing, the balance of the *Chowkidari* Reward Fund was actually increasing, indicating that the fund, rather than being used to reward the watchmen, was being used for some other purpose. Indeed, it had been suggested that the fines paid by *chowkidars* were placed into the Fund and which in turn were used to reward the watchmen – thus making the purpose of the Fund rather self-defeating.

<sup>41</sup> At any time of the year a coolie could earn as much as fifteen rupees per mensem.

*chowkidar*, yet another attempt at linking the village to the regular police, was a disappointment.<sup>42</sup> L. M. Morshead, Inspector General of Police, noted in 1909 that the ‘daffadar was too much under the influence of the village police, whose clerks they basically are.’<sup>43</sup> The *chowkidar*, who influenced the ‘very foundations of Executive Government’ therefore, was far removed from the image of the ‘ideal’ rural policeman.<sup>44</sup> That government officers continued to depend for information on this rural agent, remarked the magistrate of Hooghly, was ‘an anomaly approaching the nature of the marvellous!’<sup>45</sup>

The Act was therefore in many ways a ‘dead letter’. Successes were an exception; failure to follow the underlying principles of the Act the rule. The agency which was to set the whole system in motion – the *panchayat* – was acting in direct opposition to the requirements of the legislation. On one hand, it failed to improve the position of the *chowkidar* and on the other, undermined the ability of the district authorities to gain information regarding criminal activity. Thus, the fundamental aim of strengthening the link between the rural *chowkidar* and the district police through a suitable agency was constantly challenged. What this meant was that the government had to resort to official interference through the very agency they wished to avoid – the *thana* police – to gain any result. This in turn would inevitably compromise the other founding principle of self-governance. The authorities could

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<sup>42</sup> The *daffadar* was required to be literate and of a higher status than the *chowkidar*. However, in Khulna, for example, many *daffadars* were drawn from undesirable castes and were considered to be illiterate, lazy and inefficient. This was a result of higher placed castes looking down upon the appointment on account of there being no distinction of treatment of *daffadars* at parades. The District Superintendent of Police, Rangpur, reported that *daffadars* were largely recruited from the Dewanias. The Dewanias were the most ‘mischievous and devious class of village touts who habitually tried to spoil cases’. See *Report on the Administration of the Police for the Year 1904*.

<sup>43</sup> *Report on the Administration of the Police of the Lower Provinces of Bengal for the Year 1909*

<sup>44</sup> Extract of a Letter from E J Burton, Officiating Magistrate of Pubna to Commissioner of Rajshaye Division, Berhampore (No. 833, dated Pubna, 3 July, 1869) in *Objects & Reasons of Bills Passed in the Year 1870*, L/PJ/5/105

<sup>45</sup> George Toynebee, ‘The Village Police of Bengal’ in *Calcutta Review*, 87:174 (1888: October), p. 211

not avoid conceding that the Act had failed to produce the desired effect; nor, however, could they ignore the reasons why the conditions were so distasteful to the rural community. How the people chose to handle matters relating to the policing of their community differed from the state view of how the people *should* handle these matters. The *chowkidar* may still have been employed in menial tasks, yet the inspector general of police in 1894 also had to acknowledge that it was difficult to increase the status of the *chowkidar* because the general public, including members of the police, saw *no* harm in employing *chowkidars* to carry out menial work.<sup>46</sup>

Members of *panchayats* did not hesitate to point out to visiting officials that any successful working of the Act would involve much inconvenience and difficulty for a community that was accustomed to a much more informal system. Thus, Indian perceptions of law, economy and administration differed greatly from those of the British rulers. What widened the gap was the broader objectives of, and the practicalities of managing, a colonial state. Both factors were instrumental in moulding the Act into a very particular form of legislation, one that was at odds with its underlying principles as well as the requirements of a rural society. The remainder of this chapter examines both the clash between two foreign systems as well as the objectives of the state. By doing so, the intention is to demonstrate why the Act, and the agencies it was to 'transform', fell short of the expectations of a colonial government and the needs of the rural society it was to serve. How in this process local agencies were able to adapt state legislation in ways that suited their own needs will also be considered.

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<sup>46</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1894*

### 3.2 Self Governance versus Imperial Objectives

If the purpose of the Act was to ensure that the rural community was to be held responsible and accountable in matters relating to the rural force, then it was by no means innovative. The principle of 'self-help and self-reliance' had been central to British policy since the early days of colonial rule.<sup>47</sup> Indeed, provisions had first been made in 1813, by Regulation XIII of that year, for the maintenance of the *chowkidar* in the cities of Patna, Murshidabad and Dacca. By this regulation, also known as the first municipal law to be enacted in Bengal, the *chowkidar* was to be remunerated by monthly stipends to be paid by the residents of these three cities on the principle that 'it is just and expedient that the communities for whose benefit and protection such establishments may be entertained, should defray the charge of their maintenance.'<sup>48</sup> The attitude of the residents towards these regulations was clearly summed up by one police official who declared that the 'people cannot approve of the arrangement because it compels them to pay money without receiving the equivalent in return, the protection afforded by the *chowkidars* not being at all in proportion to the amount of their pay.'<sup>49</sup> A similar reaction had also been expressed during the Bareilly Disturbances of 1816, where a similar system was in place. It was reported by the magistrate that the inhabitants, rising against the *chowkidaree* tax, could not comprehend why a demand was being placed upon them to support an establishment

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<sup>47</sup> *Police (Bird) Committee Report* (1838)

<sup>48</sup> Anon, 'The Village Watch in Bengal: Or A Century of Abortive Reform' in *Calcutta Review* (1885), p. 107.

<sup>49</sup> Judicial No. 13D, dated 14 September 1826, 'Establishment of a Subsidiary Police' in Bengal Judicial Letters, p. 11

they neither 'seek nor require. The government may refer to it as a contribution. But to the contributor it is the same as a compulsory tax.'<sup>50</sup>

Plans to extend the regulations into the countryside were abandoned following the urban response to the compulsory nature of the provisions. However, magistrates still introduced a similar system and forced villagers to appoint *chowkidars* on fixed wages. If the *chowkidar* was unpaid, it was common practice to send four or five inhabitants of the village to the police station and for them to be kept there until payment was made. *Chowkidars* did not escape punishment either, with flogging a common practice when they were unable to discover the perpetrators of thefts in their village. A circular issued to magistrates in 1828 instructed them to 'refrain from inflicting corporal punishment as much as possible.' However, it added, 'if it is necessary to flog, then flogging should be inflicted upon the posterior, not shoulders, to distinguish them from common thieves!'<sup>51</sup>

The coercive measures were a direct result of the tenuous position which the *chowkidar* held within the colonial network. The Permanent Settlement of 1793 had established the *thana* police as the official representatives and symbol of the new rulers. But if the rule of law allowed the *daroga* and his *thana* to fall within the new official legal framework, then the role of the *chowkidar* as a subsidiary 'unofficial' agent meant that there was no legal sanction to enforce the rural watchmen to perform their duties. Act XX of 1817 did regulate the duties of the *chowkidar* and prescribed a system of periodical reports at the *thana*. Yet although control of the system was vested in the magistrates, they 'practically had no power of punishment,

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<sup>50</sup> 'The Origins & Causes of the Disturbances which occurred in the Town of Bareilly in 1816 in Consequence of the Introduction of the Chowkeedarry System' Bengal Judicial Consultations, dated 25 October 1816, p. 448

<sup>51</sup> George Toynebee, 'The Village Watch of Bengal' in *Calcutta Review*, 87:174 (1888: October), p. 205

short of dismissal, and no method of enforcing salaries.<sup>52</sup> What compounded the problem further was the influence of the *zamindar* over the *chowkidar*. The Permanent Settlement of 1793 may have allowed the East India Company to subvert the local authority of the *zamindars* and monopolise the instruments of coercion, yet at the same time financial exigencies and the necessity of working through local native agencies ensured that the monopoly was only partially complete. As various scholars have concluded, if landlords could be made to assist in the policing of the interior, then there was no need to bear unnecessary expense. Thus, control over the watchman may have been transferred from *zamindar* to *daroga*, yet it was the *zamindar* who was still in charge of the nomination, appointment and payment of the *chowkidar*. With the power and influence of the landlord still intact, it was clear which master the *chowkidar* would obey. As a result, official interference and subsequent coercion would always be deemed necessary, with some even openly acknowledging the benefits of corporal punishment.<sup>53</sup>

Thus, the principle of 'self help and reliance' upheld by the authorities was one that involved coercion, of making the people responsible for the remuneration of the *chowkidar*. But rather than reflect the might of the new administration, this coercive form of self-governance only revealed the 'practical limits of colonial ambitions.'<sup>54</sup> The Permanent Settlement may have established the rule of law but it

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<sup>52</sup> Anon, 'The Village Watch in Bengal: Or A Century Of Abortive Reform' in *Calcutta Review* (1885) p. 108

<sup>53</sup> Regulation II of 1832 may have formally abolished corporal punishment of chowkidars, but it was a decision that was not welcomed by all, with some protesting that this type of discipline was necessary in order to produce a 'vigilant' type of watchman. One Superintendent of Police labelled the decision 'uncalled for'. To the thief corporal punishment was severe, yet for the chowkidar it 'inspires activity and changes him from an idle, useless vagabond' to an intelligent active watchman...he is truly degraded when others see as the man who bears the impression of stripes on his back' see Appendix C – 'Minute by FC Smith, Superintendent of Police, Lower Provinces' in *Police (Bird) Committee Report* (1838)

<sup>54</sup> Ann Callender, *How Shall We Govern India?* (London: Garland, 1987), p. 181

was a principle that was intended to serve the extractive policies of the new rulers. As scholars such as Ranjan Chakrabarti and Basudeb Chattopadhyay have noted, attempts to control crime and organise policing in the interior were geared towards ensuring the safe extraction of this revenue. Furthermore, financial constraints and lack of manpower in controlling a vast country were also factors that determined how the British authorities could practically govern the colony. Thus, indirect rule through local native agencies was a crucial aspect of colonial governance. The need to preserve this indirect rule became even more significant in the decade following the establishment of Crown control, when as Ann Callender has pointed out, the ‘imperial budget lurched into deficit no fewer than seven times’ and the devolution of power on to local governments became even more of a pressing concern.<sup>55</sup> The goal was to strengthen bureaucratic morale and improve imperial finances through the development of local taxes. The purpose was to decentralise, not to institute self-government which was considered ‘undesirable unnecessary, and inimical to good government.’<sup>56</sup> Even by 1916, it was pointed out by civil servant Henry Wheeler that out of the three forms of self-government, village government was the least important and real development lay instead in the rural boards and municipalities.<sup>57</sup> But failure to consider the village community meant that the authority of the state could not effectively penetrate the interior. Most importantly, it widened the distance between the state and the *chowkidar*. But if coercive measures employed to access information could alleviate this distance in the early days of colonial rule, the task had become difficult following Act V of 1861, which declared these coercive measures to be illegal, thus forcing magistrates in the interior to recognise that state

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<sup>55</sup> Ibid, p.183

<sup>56</sup> Ibid.

<sup>57</sup> Henry Wheeler, *Local Self Government in Bengal* (London,1916)



intervention would now have to be legalised. Or, as another official put it more succinctly, the ‘Magistrates and Superintendents of Police need to be provided with the power to do now legally what they did before illegally.’<sup>58</sup>

The impact of these broader imperial objectives on the *chowkidari* question was twofold. Firstly, the bill that preceded the Act was one that ultimately failed to instigate the root and branch reform that had been emphasised in earlier investigations. The theory that the *chowkidar* could be positively transformed by resuming any rent-free lands or payment in kind and substituting them for a single adequate payment was one that involved dispute, expense and much time. Settling these types of land, determining the exact rights of the *chowkidar* and the duties of the *zamindars*, was a lengthy, expensive process for the authorities and also likely to upset the system of indirect rule in the interior. The point instead was simply to introduce a law whereby *chowkidars* received a cash salary and that the leading members of the village were punished for not reporting crime to the authorities. Furthermore, the Act was not accepted favourably by all. To some, it was cumbersome, lengthy and confusing for a largely illiterate community to understand. Indeed, the failures of experiments in the urban areas were widely quoted in support of such arguments.<sup>59</sup> To others, the Act was inapplicable to their subdivisions. The deputy magistrate of the subdivision of Banka in Bhagalpore District, for example, argued that in his subdivision, villages were ‘composed of miserable hamlets, widely separated from one another, in which neither adequate remuneration could be raised

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<sup>58</sup> Anon. ‘The Bengal Police’ in *Calcutta Review*, 59: 117 (1874: July) p. 137

<sup>59</sup> EJ Burton, the Officiating Magistrate of Pabna commented that even implementing a similar, shorter law in the populous and large towns of Cuttack and Pooree was fraught with difficulties. The members of the panchayat may have been intelligent and well educated. They ‘only had to learn 13 sections of the Act but did not know the law thoroughly.’ In the end, Burton had to force them ‘to learn by heart that part of the Act which bore upon their own work.’ Quoted in ‘Statement of Objects and Reasons of Bills Passed in 1870’ in L/PJ/5/105

nor could men fit enough be found to serve on Panchayats.<sup>60</sup> In the end it was recognised that it was the only practical, cost-effective scheme that could be adopted. Pay of the *chowkidar* needed to be raised somehow and as the magistrate of Nuddea pointed out, to ‘even attempt to impose a general *chowkidaree* tax was out of the question – each village must be assessed by a *panchayat*, consisting of its own headman and they must also collect the tax.’<sup>61</sup> That the *chowkidar* of the Act of 1870 had to exist alongside the *chakeran* (rent-free land) *chowkidar*, demonstrates that ultimately it was the wider objectives of an imperial government, rather than any promotion of self-government or the betterment of the *chowkidar*, which would always settle the *chowkidari* question.

Secondly, the *thana* police continued to intervene in rural policing matters when they were required by the Act to have no involvement. But the rejection of the Act by the rural community meant that the state had no way of knowing about the affairs, particularly the criminal affairs, of the village. With the failure of the artificial systems created within the village, it was the state, through the *thana* police, that had to constantly intervene in *chowkidari* matters. This was also necessary because the district superintendent of regular police – the ‘one man who can organise them as an efficient adjunct to the regular force’ – had in some districts, full powers of appointment, dismissal, punishment and reward, yet in others his authority conflicted with that of the district magistrate and subdivisional officer.<sup>62</sup>

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<sup>60</sup> ‘Extract of a Letter from the Magistrate of 24 Parganahs to Commissioner of the Presidency Division, Alipore, August 1869 in Ibid

<sup>61</sup> ‘Magistrate of Nuddea, dated 17 December 1868’ in Ibid

<sup>62</sup> Robert Carlyle, Inspector General of Police, in 1902 argued that the diversity of practice led to a lack of uniformity in districts. Despite it being widely acknowledged that the District Superintendent of Police should be given responsibility over the administration of *chowkidari* affairs, it was the District Magistrate who, with the assistance of the Subdivisional Officer, still continued to exercise control over this agency. In many cases the Subdivisional Inspector, the Chief police officer, was

The occurrence of frequent transfers, existence of large districts, poor communications and burden of routine and office work also increased the distance between the authorities and the village community. The only representative of government in rural Bengal, concluded the Chief Secretary to the Government of Bengal, was the *thana* police, an agency considered to be unpopular. Thus, it was the state that had to employ coercive measures to ensure that information was obtained. Indeed, attempts to improve the system introduced in 1870, whether it be through the introduction of the circle officer or the leading member of the *panchayat* being designated as president, were all geared towards strengthening the link between the *thana* police and the *chowkidar*. Thus, the introduction of the *chowkidari* reward fund, the provision of uniforms and the parade system, which required them to attend the *thana* and report criminal occurrences, were all measures designed to increase the efficiency of the *chowkidar* and turn him into an ‘unofficial’ member of the police rather than a representative of his community.

It is significant to note that whilst the authorities were anxious to legalise their intervention in rural policing matters, they were content for the *chowkidar* to remain a supplementary agent to the official police. Indeed, this unofficial status, which permitted him to work outside the legal framework established by the authorities, was necessary in order for the colonial government to overcome the practical limitations of their rule. It allowed the *chowkidar* to avoid the restrictions that were placed upon the regular police force. Under the Code of Criminal Procedure, a police officer would either have to ‘arrest a man or let him alone...as long as the investigation and the guilt of the accused is only a matter of suspicion, he

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completely ignored by the District Magistrate. Examples can be found in the *Reports on the Administration of the Police in the Lower Provinces of Bengal 1870-1915*

cannot be safely arrested and yet he cannot be allowed to run away.<sup>63</sup> It is here that the *chowkidar* had a crucial role in the extraction of information relating to crime. One judge offered a lengthy description of exactly how the system operated:

The investigating officer would send for the suspected person and then make him over to the *chowkidar* and village men to learn the truth from him. This takes a long time, and when the accused makes a confession, true or false, he is brought to the investigating officer who records his statement and takes him into *formal* custody. Thus, what is called 'formal arrest' is made *after* officer records the confession.<sup>64</sup>

'Rotten and illegal' the above procedure may have been, however it could not be denied that it was the only way in which cases could be brought to the attention of the authorities.<sup>65</sup> The sub-inspector, a central character in the legal framework established by the state, could not, due to the restrictions placed upon him, adhere to legal guidelines. Hence he would always be dependent upon the informal network provided by the *chowkidar*. But this informal network could also act as a double-edged sword. Despite his key role, the unofficial status of the watchman had meant that, according to section fifty four of the Criminal Code of Procedure, he had no power of arrest without warrant and that any accused arrested by him, or passed over to him by any private person, who subsequently escaped was not seen to be committing an offence.<sup>66</sup> Moreover, the law gave neither the *chowkidar* nor any private person a right to arrest except for an offence committed in their view. In other words, because the village *chowkidar* was not properly regarded as a police officer then any person arrested by him would not be in *lawful* custody. In instances where

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<sup>63</sup> H.R. Coxe, Judge of Midnapore, No. 164, dated 26 November 1897, Bengal Proceedings, Judicial Department, Year 1898

<sup>64</sup> K.N. Roy, Officiating Sessions Judge of Pabna & Bogra, No. 138, 20 November 1897, Judicial Proceedings for the Year 1898

<sup>65</sup> *Ibid.*

<sup>66</sup> See for example 'Kalia & Others versus Kalu *Chowkidar*' in *Indian Law Report*, 27, Calcutta Series, 366 dated 11 January 1900 and 'King Emperor versus Johri' in *Indian Law Report* in 23, Allahabad Series, dated 14 March 1901. In both these cases, it was declared that the accused, prior to their respective escapes from the *chowkidar*, were not actually in lawful custody because the *chowkidar* could not be considered a police officer.

an accused could be legally punished according to one section of the code, another section would conflict with the decision and the initial verdict would be overruled.<sup>67</sup> Regardless of whether custody met the terms and conditions of the code the *chowkidar* could still be liable to departmental punishment.<sup>68</sup>

In 1898 it was proposed that section fifty four be amended to declare the *chowkidar* as a member of the official force which would provide him with that legal sanction. Crucially, however, he, unlike other officers, was to be exempt from the rule, or section sixty one, which stated that any accused would have to be released after twenty-four hours. The suggestion caused an outcry with some arguing that if the *chowkidar* was to be an official member, then he should also face the same restrictions as other officers.<sup>69</sup> However, it was the proposed role of the state that raised uncomfortable questions over what should and should not fall within the legal purview of the colonial government. The excessive ways of the *thana* police had always been known as well as their successful attempts to evade the 'twenty four detention rule' by collaborating with the *chowkidar*. Thus, the police and the *chowkidar*, who would not be restricted by any time rule, could wilfully arrest accused persons for indefinite periods of time through the procedure described in the above extract. This relationship, although widely criticised, was tolerated as it was conducive to the needs of the state. What bothered the authorities about the proposed

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<sup>67</sup> In 'Kalia & Others versus Kalu Chowkidar', the accused and his accomplices were actually sentenced to two months rigorous imprisonment under section 225 of the Indian Penal Code. But the verdict was overturned because it was found that the private person, who had arrested the accused person under section 59 of the CPC, had not actually seen the theft take place. As a result, the arrest, and the transferral to the *chowkidar*, who was not regarded as a police officer according to section 59, was illegal. The conviction of the accused and his accomplices was subsequently set aside.

<sup>68</sup> However, in other provinces there were several court rulings which declared the *chowkidar* was not liable to be held responsible in such circumstances, his main role being merely to pass on information. See for example 'Empress of India versus Kallu and Another' in *India Law Report*, Allahabad Series, 25 June 1880 and 'Empress versus Bakshi Ram' in *India Law Report*, Allahabad Series, 18 August 1880

<sup>69</sup> It also contradicted an earlier ruling that no police officer was to detain any accused person for more than 24 hours. See Queen versus Behari Singh, 7, *Weekly Reporter*, Criminal 3

amendment was that it would *legalise* the ‘rotten, mischievous and illegal system’ and provide the stamp of official approval to a process that was widely condemned.

In the end the code remained unchanged and the *chowkidar* continued to act as a supplementary agent to the police. The row over the proposal demonstrates that the legal framework could be shaped according to the wider objectives of the state. On the one hand, as demonstrated earlier, it could allow the state to legally intervene and coerce natives to comply with the regulations set by the authorities. Yet at the same time, as the above procedure described by the judge clearly illustrates, full legalisation, which would essentially bring the *chowkidar* within that official network, was recognised as being detrimental to these objectives. It was one thing to legalise state intervention in the guise of self-governance and to tolerate an investigative procedure subject to much abuse and excess. Indeed, it was only through this procedure that results could be produced in the interior. But to approve such a system would only damage the image of benevolent authority that was presented to the community and, most importantly, lose the connection between the *chowkidar* and the community. As noted by officials, to remove *chowkidars* from their personal settings would only alienate members of the community, which in turn would lead to loss of information and the ability to deal with criminal cases.

Ultimately, the outcome of the proposal demonstrates that the informal network, however much it was criticised and despised, would always form the basis of the formal policing network. In 1874, for example, Commissioner Gordon of Bhagalpore introduced an experiment simply referred to as the ‘Gordon system’. This scheme of Gordon rested on the idea that the ‘criminal castes’ to which *chowkidars* belonged had their own *sirdars*. Thus, whenever a *chowkidar* was found

to be acknowledged as a *sirdar* of his caste, he was appointed as *sirdar* of the *chowkidars* and made responsible for the behaviour of those under his jurisdiction, whether *chowkidar* or *badmash* (bad characters). It may have been a long-standing grievance of the authorities that *chowkidars* were lower caste ‘criminals’ more likely to engage in crime than to actually prevent it, but Gordon chose to work upon the knowledge that the *chowkidars* ‘as a body set a value on their appointments and so can exert control over them.’<sup>70</sup>

It was reported that, as a result of the Gordon scheme, there was a ninety five percent decrease in criminal offences in the Sudder division. However, this system was still subject to widespread criticism at a time when the authorities wished to improve the image of the *chowkidar* and indeed the system was never applied in any other district. What it does illustrate, however, is the ability of some officials to recognise that a complete overhaul would never be possible and that it was more conducive to the purposes of the state to try and adapt to the ‘informal methods’ of controlling crime.

The necessity of informal methods is also apparent in the memoir of retired police official Girish Chandra Basu who described a system in which he was heavily dependent upon the ‘invaluable’ intelligence he received from the *chowkidars* to counter the high levels of dacoity in his area.<sup>71</sup> Their successful collaboration was attributed by Basu to his willingness to ‘take on their advice and work alongside them throughout the night.’ That these *chowkidars* also acted as ‘*lathials*’ for local landholders to gain extra income, was of no concern to Basu. Their participation in

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<sup>70</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1874*

<sup>71</sup> Basu was appointed as Darogah of Nabadwip thana, part of the Shantipur Subdivision of Krishnanagar district in 1853 and held the post until 1860. Girish Chandra Basu, *Sekaler Darogar Kahini* (Calcutta, 1883)

the lathial system, one condemned by the authorities, was accepted by him as an aspect of local networks. He did not ‘think of a centralised state system...to him local powers were reality.’<sup>72</sup> What was of importance to him was their determination to assist him in handling dacoities within *their own* jurisdictions and to bring security to their inhabitants. As far as that was the only objective, then the partnership would be a close and successful one.<sup>73</sup>

The account of Basu may have been one relating to police prior to establishment of the new police in 1861 but its similarity to the procedure criticised in 1898, clearly demonstrates the importance of the interplay between official and unofficial methods of gathering information and controlling criminal activity. For, if activity was punished according to official methods, then of equal importance were the informal methods that located such occurrences and placed them with the official gaze. One could not operate without the other. To legalise the informal methods could place both networks on an equal footing but it would effectively disable the process of gathering information. What was more important to the state is clearly apparent in the outright rejection of the proposed amendment and the preservation of a code whose conflicting regulations, rather than clarifying the exact role of the *chowkidar*, only served to uphold his anomalous position.

The fruitful relationship that could be formed between the official policeman and his supplementary agent is also described in the memoirs of police official Charles Elphinstone Gouldsbury. Gouldsbury recalled that his success in tackling

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<sup>72</sup> Ibid.

<sup>73</sup> Indeed, Basu cites many examples of camaraderie and loyalty. To provide one instance, the *chowkidars* provided Basu with a hookah for his ‘fatigued body’. It was the ‘best tobacco he had ever tasted’. Furthermore, Basu also mentions the sense of paternal responsibility that he felt towards the *chowkidars*, patrolling alongside them during the night. See Girish Chandra Basu, *Sekaler Darogar Kahini*



crime was due to the relationship that he formed with the wily Kali Dass, a *chowkidar* who also happened to be part of a criminal gang. After receiving sufficient inducement, Kali Dass would be employed as an informer.<sup>74</sup> He would, Gouldsbury noted, turn out to be an ‘excellent detective... through information supplied by him the police succeeded in arresting several members of the different gangs, and in finally dispersing most of them.’<sup>75</sup> Gouldsbury and Kali Dass would continue their successful ‘partnership’ which would only end when Kali Dass’ original criminal associates ‘discovered he was aiding the police and threatened to kill him if he was found to be assisting them again.’<sup>76</sup>

Thus, the manner in which the legal framework could be shaped according to different requirements demonstrates that it was the practicalities and anxieties of empire that determined the form of the Act of 1870. Indeed, the dependence of the government on an agent who was considered to be a ‘complete disgrace’ and their attempts to turn him into a ‘very bad form of policeman’ illustrates how limited state options really were.<sup>77</sup> It was practical and cost-effective to ‘assess’ the people through a very particular form of governance. The intrusion of the *thana* police was necessary to ensure that these conditions were met, and it was even more convenient to turn a blind eye to the ‘questionable’ coercive measures applied by the *chowkidar*, measures that could not be applied legally by the official police. Such measures demonstrate that information relating to crime and the control of such occurrences, and thereby filling the gaps existing within the colonial ‘information network’,

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<sup>74</sup> Indeed, the relationship was heavily dependent upon Gouldsbury providing Kali Dass with a monetary award after which Dass would tell Gouldsbury ‘how can a poor *chowkidar* refuse the order of his Hakim?’ See Charles Elphinstone Gouldsbury, *Life in the Indian Police* (London: Chapman & Hall, 1912), p. 28

<sup>75</sup> Ibid, p. 39

<sup>76</sup> Ibid, p. 135

<sup>77</sup> Commissioner of Jessore, quoted in ‘Village & Indigenous Agency Employed in Taking the Bengal Census of 1872’ in *Census of Bengal for the Year 1872*

would always be the overriding aim of the state with the needs of the citizens being relegated to a secondary position. The state, in other words, would always be willing to bend the rules over questions of ‘legality’ and ‘illegality’ in order to preserve their own interests as well as a level of stability and order in the interior. The negative response to the proposed amendment confirms the reluctance to upset the balance whilst the memoir of Basu demonstrates that even ‘illegal’ practices could still produce an effective working relationship as long as the complexities of the rural watch were understood and accepted.<sup>78</sup>

But state attempts to mould the legal framework according to their interests would also heighten the clash between native and British forms of policing and authority. The Act of 1870 only served to further accentuate these differences. It did not seek full legalisation of the watchman yet by legalising state intervention in *chowkidari* matters it placed the village community in a very difficult position. They were to control their own affairs yet this ‘self-governance’ would be regulated by the state. Indeed, the Code of Criminal Procedure had specifically stated that a sub inspector could direct neighbours to take charge of the accused and that leading members of the village community were legally obliged to report criminal occurrences to the police. How village members chose to perceive the regulations and handle the responsibility delegated to them proved to be widely at variance with state perceptions of law and authority. Furthermore, with many cases still failing to be reported, the observation that the ‘police are disinclined to swell their returns with reported crime which they feel unable to detect and which entail troublesome

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<sup>78</sup> Basu’s familiarity with the rural policing network was a result of his travels by boat over a period of five years with his uncle, who happened to be a senior government officer. It was through these travels that he became familiar with the intricacies of the rural system, with the chowkidars informing him of how dacoities actually took place and the techniques employed. It was through this kind of intelligence that he managed to capture a major dacoit in his jurisdiction.

and infructuous enquiries' only heightened the difficulties of gaining access to knowledge of criminal affairs.<sup>79</sup> These 'troublesome' enquiries were resolved through arbitration within the community. Ultimately, resorting to arbitration revealed the wide gap between these visions of the people and those of the state, and the provisions of the Act failed to meet the needs of the rural society it was to serve. However, at the same time, if the Act could be shaped to meet specifically colonial requirements then the rural society could also adhere to the Act in ways that were more conducive to their own interests. Indeed, it was suggested by one official that the petty complaints that were made were 'without foundation with a view to substantiate or bolster up a civil claim...in other cases a person is purposefully framed due to some personal enmity.'<sup>80</sup> It is the aim of the following section to discuss the clash between colonial requirements and native practices and the impact this had on the response of the people to the form of governance introduced by the state.

### **3.3 Panchayats, Presidents and the State: A Conflict of Interests**

The clash between native systems and the system of the foreign rulers has been examined by various scholars. John McLane has described native political authority as 'fragmented, delegated and then sub delegated, a hierarchy in which "kingship" was practised informally at many levels and dependence was owed to particular persons, extending only as far as physical communication permitted.'<sup>81</sup> There was minimum state intervention in the working of local level systems, which of course

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<sup>79</sup> 'Progress of Crime' by L. M. Morshead in *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1910*

<sup>80</sup> *Report on the Administration of the Police of the Lower Provinces, Bengal for the Year 1879*

<sup>81</sup> John McLane, *Land and Local Kingship in Eighteenth Century Bengal* (Cambridge: Cambridge University Press, 1993), p. 307

was in direct opposition to the centralisation sought by the British rulers. In a similar vein, P. J. Musgrave concludes that the estate, rather than being a tightly organised system controlled by the all-powerful landlord, contained a 'loose clump of relationships with a hierarchy of employees to manage the estate.'<sup>82</sup>

Anand Yang, who has written extensively on native systems of control within the interior, although questioning the emphasis Musgrave places upon the many layers of influence,<sup>83</sup> also demonstrates the importance of local levels of control. He has argued that the colonial state actually worked through local systems in order to facilitate its economic interests and to 'provide a semblance of authority – thus it allowed vast arenas of power and control to devolve on its local allies.'<sup>84</sup> Devolution of control thus ensured that the state could never fully penetrate the interior and thus local systems could continue to exist and adapt in their own way to the changes introduced by the state.

The different objectives of both systems have also been examined. Land was important to both British rulers and their Indian subjects. However, as Ainslie Embree has argued, whilst the British placed an emphasis upon the exclusive ownership of land, of private property being central to the concept of liberty and economic development, Indians were concerned, not with ownership, but defending 'interests' of different groups.<sup>85</sup> Thus, Walter McNeale has argued that whilst the British focus was upon profit, efficiency and improvement, the native system centred

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<sup>82</sup> P.J. Musgrave, 'Landlords and Lords of the Land: Estate Management and Social Control in Uttar Pradesh 1860-1920' in *Modern Asian Studies*, Volume 6, Number 3 (1972), p. 272

<sup>83</sup> Anand Yang, *The Limited Raj*, p. 230. In opposition to Musgrave, Anand Yang has argued that although there were different actors within the agrarian system, control in agrarian society 'ultimately rested on the extractive capacities of the zamindars who monopolised the production and distribution of the resources of the land'.

<sup>84</sup> Ibid.

<sup>85</sup> Ainslie Embree, 'Landholding in India & British Institutions' in R.E. Frykenberg, *Land Control & Social Structure in Indian History* (Madison: University of Wisconsin Press, 1969), pp. 33-53

on the issues of caste, village factions and kinship. Gaining and maintaining the support of important groups was crucial in upholding political power. Ritual, prestige, patronage and obligation to their fellow villagers, and thus preserving the 'moral economy' were all key elements in maintaining such power within a village.<sup>86</sup> In a similar vein, Chitta Panda has taken the view that the estate was not simply an element in economic activity but was a site where one could assert and enhance their authority and local influence. It was, Panda continues, an expression of lordship and a mark of social position.<sup>87</sup> Although Panda has referred primarily to the *zamindars*, the estate can also be considered an arena in which power, wealth and prestige could be distributed amongst several groups. Thus, rather than economic improvement, the Indian social system rested upon kinship, upon the idea of security resulting from the effective management of people. As McNeale has concluded, to 'manage a village means to manage people by manipulating the rules of their hierarchy'.<sup>88</sup> And, as Thomas Metcalf has stated, the *chowkidar* and the *patwari* were vital within this network, as it was through them that a landlord could increase his number of dependants and his power in the locality.<sup>89</sup> Thus, the indigenous system was flexible enough to allow the coexistence of several groups trying to establish their power and authority.

This of course clashed with the British vision of a sole authority. The impact of aggressive extractive policies of the British rulers which disrupted this native

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<sup>86</sup> Walter McNeale, 'Land is to Rule' in R E Frykenberg, *Land Control & Social Structure*, p.14. John McLane has also similarly argued that, within villages, dominant peasants involved in revenue collection tended to under-measure their fellow villagers as they feared over-assessment would lead to possible rebellion. Thus, the 'power of indulgence' was vital to the working of the village moral economy. See John McLane *Land & Local Kingship*.

<sup>87</sup> Chitta Panda, *The Decline of the Zamindars: Midnapore 1870-1920* (Oxford: Oxford University Press, 1996)

<sup>88</sup> Walter McNeale, 'Land is to Rule' in R E Frykenberg, *Land Control & Social Structure*, p. 17

<sup>89</sup> Thomas Metcalf, *Land, Landlords and the Raj Land, Landlords and the British Raj: Northern India in the Nineteenth Century* (Berkeley: University of California Press, 1979)

'hierarchy of authorities' has been widely examined. Chitta Panda for example has pointed out that the purpose of the Permanent Settlement was to establish the government as the final authority to interpret the rights to property- and to make this known to the indigenous population.<sup>90</sup> John McLane has similarly asserted that these policies led to a weakening of the local kingship system. *Zamindars* could not, at least not to the same extent, carry out their paternalistic role which strengthened their position on the one hand and preserved the moral economy of the village on the other. Patronage in the form of revenue free land and gifts was no longer viable whilst state monopoly of policing powers led to unemployment of low level villagers who turned, as a result, to crime. Other scholarly work has focused attention on the impact of a legal apparatus designed to preserve the new rule of property.<sup>91</sup> For the British, it was necessary to codify the law and, in the words of Basudeb Chattopadhyay, 'gain a monopoly over the instruments of coercion' as well as establish legitimate institutions, such as the court and prison, which would ensure the smooth operation of the law.<sup>92</sup>

To the rural community, the new principles differed widely from their own informal traditional system. Theirs was a system, Marc Galanter has commented, in which there was 'no systematic state control of the administration of law...disputes in villages were not settled by royal courts but by tribunals of the locality of the caste within which the dispute arose, or of guilds and associations of traders and

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<sup>90</sup> Chitta Panda, *The Decline of the Zamindars*

<sup>91</sup> See Chittabrata Palit., *Tensions in Bengal Rural Society: Landlords, Planters and Colonial Rule 1830-1860* Basudeb Chattopadhyay., *Crime & Control in Early Colonial Bengal 1770-1860* and Ranjan Chakrabarti., *Terror, Crime and Punishment: Order & Disorder in Early Colonial Bengal 1800-1860*

<sup>92</sup> Basudeb Chattopadhyay, *Crime & Control*, p. 24.

artisans.<sup>93</sup> However, the system introduced by the British was one which entailed much time, expense and delay for the ordinary villager.<sup>94</sup> Thus, as Ranjan Chakrabarti has concluded, the rule of law was one that marked a vital shift ‘from status to contract, from the varying currents of customary law to a fixed form of law and from compromise to decision.’<sup>95</sup>

This ‘vital shift’ also applied to the *panchayat*, or a gathering of village leaders who assembled to resolve a dispute through consensus and compromise. It was a ‘council of elders’ requiring no formal membership, their ‘composition varying with time and circumstance, reflecting the politically significant leadership within the village.’<sup>96</sup> Leaders would meet informally to hear complaints and negotiate a solution which was acceptable to all participants. The role envisaged by the British for this agency and their subsequent reshaping of it has been the subject of significant scholarly interest. Indeed, this has proved fruitful for those who have critically analysed the conduct of *panchayats* in independent India. S.S. Khera has argued that *panchayats* can only work effectively if the legal framework on which they rest, one created by the British, is amended to accommodate more active participation by village bodies.<sup>97</sup> Marc Galanter, as well as Ralph Retzlaff, on the other hand has raised awareness about the difficulty which the state has faced in ensuring public participation *without* compromising their access to the people for the

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<sup>93</sup> Marc Galanter, *Law and Society in Modern India* (Oxford: Oxford University Press, 1989), pp. 16-17

<sup>94</sup> With the police station, as well as the regular courts, being located at a considerable distance from the village, the process of making a complaint at the station was an arduous one for the local villager. Upon arrival at the station, they faced the prospect of being indefinitely held for further investigation during which time they could face false accusations, corrupt intermediaries and a very alien form of trial and investigation. The lengthy process would in turn affect their ability to earn, for they could not return to their villages and resume employment.

<sup>95</sup> Ranjan Chakrabarti, *Terror, Crime and Punishment*, p. 268.

<sup>96</sup> Ralph Retzlaff, *Village Government in India: A Case Study* (London: Asia Publishing House, 1962), p.16

<sup>97</sup> S S Khera, ‘District Administration – Panchayats as Courts of Justice’ in H D Malaviya. *Village Panchayats in India* (New Delhi: All India Congress Committee, 1956)

purpose of development.<sup>98</sup> Erin Moore, in her study of dispute resolution in the Nara district of Rajasthan, has also examined the various ‘dispute processing forums’ that are available to the Indian villager as well as the circumstances that determine which forums are employed and at what point they are made use of.<sup>99</sup>

Considering the issue from another perspective, Crispin Bates has made the point that the *panchayat* can also be considered as a construction of the colonial mind, one that could be used to create an ‘Orientalist’ image of rural India as being frozen in antiquity. This image of a timeless and passive community assisted the colonisers in portraying the villager as being ‘loyal’ to the British regime. The construction of this particular image could thus serve as a powerful tool with which the British could legitimise and defend their policies in India.<sup>100</sup> This was clearly demonstrated in a meeting of the Legislative Council in 1892. Members of the Council had assembled to discuss whether a process of election should be introduced in the villages to allow people to elect *panchayati* members. It was agreed in India that ‘selection’ was the better term for they followed a system that was ‘primitive and ancient that we can read in Greek and Sanskrit literature...the people get together and talk and eventually an opinion emerges which is the opinion of them all...this is the mode through which primitive tribes and races have elected their private

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<sup>98</sup> See R Retzlaff, *A Case Study of Panchayats in a North Indian Village* (Berkeley: University of California, 1959) and Upendra Baxi and Marc Galanter, ‘Panchayati Justice: An Experiment in Legal Access’ in M Cappellett and B Barth (eds). *Access to Justice volume III: Emerging Perspectives*, XXXV, 564, (1979) pp. 341-386

<sup>99</sup> Moore has argued that the type of forum that a villager may choose – ranging from their own family, the traditional village *panchayat* to the state court – is dependent upon the nature of the dispute and the relationship between the conflicting parties. The ultimate aim of the villager is to maintain power within the community, prevent disharmony and preserve relations between neighbours. Most cases, whether minor theft or murder, are settled within the village unless villagers actively seek use of the state system, either for their personal agendas or to punish individuals who continue to ignore village sanctions. Use of the state system, she has argued, is very much a ‘last resort’. See Erin Moore, *Conflict & Compromise: Justice in An Indian Village* (London: University Press of America, 1985)

<sup>100</sup> Crispin Bates, ‘The Development of Panchayati Raj in India’ in Crispin Bates & Subho Basu, *Rethinking Indian Political Institutions* (London: Anthem South Asian Studies, 2005) pp. 169-184



assemblies.<sup>101</sup> Furthermore, what further reinforced the image was the belief that the *panchayat* was wise and all-powerful as it ‘held in its hands the great ancient social engine – *caste*’. *Panchayati* control over these affairs could be tolerated as they did not conflict with the British courts but issues such as property were to remain ‘official matters’ due to the possibility of boundless litigation.

Simultaneously, alongside this colonial construction, the British had also envisaged a more practical role for the *panchayat*. Significantly, this role mirrored early colonial attempts to delegate, decentralise and alleviate the financial and administrative burdens of imperial rule. This further demonstrated that, rather than forming part of an innovative process which would involve the promotion of local self-government, the *panchayat* was shaped according to the needs and requirements of the colonial state. The state simply required the *panchayat* to act as a tax collecting body and as a medium through which information relating to crime would pass from the watchman to the regular police. It was also intended to serve as a more acceptable substitute for the *thana* police, which could never act as effective link between the interior and the state. Moreover, whether the Act of 1870 was suited to the conditions of Bengal was not of primary importance. Rather, the most important objective was to provide machinery for the pay and supervision of the *chowkidar* without ‘cutting them off from the daily life of their village’ and make this system legal and therefore compulsory.<sup>102</sup>

Through a system of delegation, not only could the state evade the costs of policing in the interior but also reallocate lengthy ‘municipal’ business such as

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<sup>101</sup> ‘Council Proceedings for the Amendment of the Act of 1870’ in L/PJ/6/335, File 2150, p. 53

<sup>102</sup> Ibid.

sanitation and petty theft. One inspector general commented that too much was expected from this new form of *panchayat*. Whilst in former times:

panchayats managed villagers in an informal 'give and take' system with very little supervision...but our policy has been to destroy this system and the panchayat has been revived as a part of our executive machinery and we expect from the members a strict and exact performance of duties, such as never fell to the old panchayat.<sup>103</sup>

The *panchayat* and the self-governance envisaged by the colonial government collided with native conditions and expectations on many levels. On a practical level, as noted earlier, the authorities had introduced a lengthy and cumbersome Act, one steeped in confusing legal terminology, which was to be followed by a largely illiterate community. This was a community in which personal relationships and rumour, rather than the rule of law, played a central role in how they made sense of their world, and indeed, colonial rule. The colonisers may have been able to create an Orientalist image of the villager but the image of the coloniser in the native mind was held in a more realistic light. Thus, during the Bareilly Disturbance of 1816 forcible taxation was the grievance. Nearly half a century later, the same grievance resurfaced in the first official census carried out by the government. The census of 1872 was believed to be 'connected with taxation or something equally distasteful. In Orissa rumour had spread that tax would fall on those who trod on village path, who carried an umbrella, or those who fed Brahmins.'<sup>104</sup> Rumours of forcible conversion, of people being the subject of a headcount so as to serve in war, of plague being 'introduced in order to thin out people where they were too dense', further highlight the distance between the government and the people.<sup>105</sup> At the same time, however, villagers attempted to work within the system. In one case they 'subscribed eight

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<sup>103</sup> J Munro, Inspector General of Police for the Lower Provinces, *Administration Report for the Police of Bengal for the Year 1880*

<sup>104</sup> *Census of Bengal for the Year 1872*

<sup>105</sup> *Census of Bengal for the Year 1901*

annas or a rupee amongst themselves and sent it in by the *chowkidar* who took the returns to the thana in the hope of making it all right and preventing the returns from being sent back.<sup>106</sup> The British may have wrestled with the dilemma of preserving the needs of a colonial state whilst appearing just and benevolent to their 'loyal' village community, but to that community the true nature of the government would always be clearly visible. As Hugh Tinker has noted, local self-government, in the mind of the native individual 'could only mean one thing – imposition of new regulations and taxes.'<sup>107</sup>

The principles upon which the Act of 1870 was founded also served to undermine the moral economy and the relationships that had bound the village community together. The new Act provided the *chowkidar* with the power to demand his remuneration from village members. But this was an agent whose remuneration was traditionally dependent upon the goodwill and custom of the community. He took whatever each villager could afford to give him at the times that were most convenient to them. These included contributions of grain as well as the various miscellaneous 'fees and perquisites called '*haq*' for attendance at hats, feasts and festivals and guarding shops, carts and travellers...free services of the barber, potter and other artisans were also available.'<sup>108</sup> By carrying out the compulsory orders of the state, the watchman would only alienate himself from a community already hostile to any change introduced by the colonial government. During the 1872 census the commissioner of the presidency division had noted that in the registers of one *thana* in Hooghly:

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<sup>106</sup> *Census of Bengal for the Year 1872*

<sup>107</sup> Hugh Tinker, *The Foundations of Local Government in India, Burma & Pakistan* (London: Pall Mall Press, 1968), p. 38

<sup>108</sup> Anon, *The Village Watch in Bengal*, p. 98

the names set down as enumerators were of people who could not read or write. With the census being treated with suspicion, educated people had threatened to beat the village watchman if he put down their names. As a result, the watchman simply puts down the names of people of whom he was not afraid.<sup>109</sup>

Therefore, the *chowkidar*, when representing the state on official business, could elicit a very negative response from his fellow villagers, who themselves tried to evade the *chowkidari* tax whenever possible.<sup>110</sup> The authorities may have wished him to remain a part of the village community for their own purposes. However, ironically, by introducing a system unpopular with the villagers, a system in which the *chowkidar* played a central role, the authorities were only serving to weaken the relationship between watchman and villager. For the British, the *chowkidar* represented a watchman in the sense that he guarded property during the night. But for the Indians, including the *chowkidar* himself, he was more than a watch and ward character. He was involved in the tilling of his land, in collecting rents and summoning refractory tenants to the *zamindar's* *cutcherry*. It was the nature of these duties which enabled him to possess knowledge of all that went on within his village. Any attempt to jeopardise this state of affairs would inevitably affect his relationship with members of his community.

The Deputy Superintendent of Police in Mymensingh reported in 1874 that there was reason to believe that many *chowkidars* had taken the *chuprass* against their own will at the coercion of the *amlah*, *zamindar* or his fellow villagers.<sup>111</sup> Indeed, it was reported in Khulna that a *daffadar*, the immediate superior of the watchman, was killed by a '*dao* whilst sleeping because some bad characters had

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<sup>109</sup> 'Village & Indigenous Agency' in *Census of Bengal for the Year 1872*

<sup>110</sup> For instance, there was a rumour that house numbering was connected with the *chowkidari* assessment and families living in separate messes sometimes tried to have their houses entered under the same number in order to avoid being assessed separately. *Census of Bengal for the Year 1901*

<sup>111</sup> *Administration Report for the Police of Bengal for the Year 1874*

become annoyed at his watching them.<sup>112</sup> Thus, the responsibilities required from the *chowkidar* by the state could evoke a hostile response from his fellow villagers. Circumstances, however, could also evoke a certain response from the *chowkidar*. For example, he could take advantage of his position when it came to poor, illiterate villagers. In the district of Backergunge, it was found that one *chowkidar* had extorted money under the pretence that he had been ordered to measure the height of the women and the breadth of their chests.<sup>113</sup>

The conditions also placed the members of the *panchayat* in a difficult position. In contrast to the informal nature of the traditional forum, the defining feature of the new *panchayat* was its compulsory nature. The rules and guidelines of the new system were legally binding and could not be ignored without ‘incurring the penalties of the law.’<sup>114</sup> Penalties could include a fine of fifty rupees or having their goods distrained if payment was not collected or made. Punishment was severe in matters relating to crime.<sup>115</sup> Furthermore, it was of indefinite duration, with members possibly spending up to three years in the same post. What made this post distasteful was that it entailed a great amount of personal trouble and responsibility, with the police station or magisterial headquarters located at quite a distance from the village. Added to this was the loss of dignity felt by higher caste villagers who were simply not at ease with the idea of having to go round the village from door to door collecting tax from those from an inferior caste or low social status. Most importantly, however, to serve on such a *panchayat* and adhere to the guidelines set

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<sup>112</sup> *Administration Report for the Police of Bengal for the Year 1901*

<sup>113</sup> *Census of Bengal for the Year 1872*

<sup>114</sup> Reverend James Long, *Village Communities in India & Russia*, (Calcutta, 1870), p. 28

<sup>115</sup> Members of the *panchayat* were liable to prosecution under section 167 of the Indian Penal Code if they failed to pass on information which they were legally bound to give. They would either face imprisonment for one month or a fine extending to 200 rupees.

by the state would mean that members would have to alter the moral economy of the traditional system and their position within it. It was not in the interest of leading village members to upset this delicate balance. The extraction of revenue may have been central to British policy in India but in the native system an effective landlord was not necessarily one who was economically efficient. Indeed, as Walter McNeale has pointed out, a landlord who was too economically efficient could potentially alienate local support, which was the base upon which his power rested. Furthermore, in a social system which depended very much on patronage and obligation, members of the *panchayat* could incur the wrath of fellow villagers if demands they deemed as unnecessary were placed upon them. This was certainly the case for one *panchayati* member in Chittagong who ‘once went to the length of selling up a defaulter...in revenge his house was burnt down and Rs. 2000 of property destroyed.’<sup>116</sup> In many cases it was simply wiser, if the tax was not collected, to pay out of their own pockets. Events could also take a more dangerous turn in matters of crime. In 1899, for example, a *panchayati* member in Midnapore was ‘decoyed into an empty house, by the wife of a villager he had imprisoned, and killed.’<sup>117</sup>

Therefore, to follow the guidelines set by the state would mean placing themselves in a position that conflicted with their traditional role. Their ‘traditional role’, concluded the joint magistrate of Chittagong, had allowed important men of the village, to ‘generally exercise as much power as they desired and therefore they had nothing to gain by becoming members of a panchayat.’<sup>118</sup> It was also reported by magistrates that the residents themselves were not in favour of a change. When village leaders were required by law to become *panchayati* members, they chose to

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<sup>116</sup> *Administration Report for the Police of Bengal for the Year 1878*

<sup>117</sup> *Administration Report for the Police of Bengal for the Year 1899*

<sup>118</sup> *Police (Beames) Committee Report (1891)*, p. 20

serve in ways that met their own needs as well as those of the community. The disregard for the new system was illustrated in the Purneah district in 1878 when it was discovered by a visiting official that the 'copy of the Act under which one panchayat was conducting its affairs was found to be a translation of Dr MacLeod's cattle disease!'<sup>119</sup> This was not an isolated instance of the law being 'ignored'. The police administration reports offer many instances of *panchayats* failing to comply with the provisions, particularly with regard to collection and payment. The general consensus held by inspecting officials was that *panchayati* accounts were purely fictitious, kept only for the purposes for official inspection; that members of the *panchayat* were unwilling to collect arrears by attachment of the property of defaulters; that many *chowkidars* were in arrears, although the account books implied that their salaries had been paid in full.<sup>120</sup> *Panchayati* members were by law required to collect the tax and pay the *chowkidar*. Yet it was found in many instances that it was the *chowkidar* himself who had to collect his own pay. It was also discovered that methods of evading tax employed during the early days of colonial rule were still in practice and members of the *panchayat* had their own personal 'agendas'. Wealthier members of the community, often friends or family of members on the *panchayat*, were lightly taxed whilst the poorest villagers had to bear the majority of the cost. Furthermore, argued the joint magistrate of Chittagong in 1890, the assessment of tax 'enabled the successful faction to wreak its spite upon the unsuccessful one and under-assess its own members.'<sup>121</sup>

At the same time, however, the dialogue between *panchayati* members and visiting officials recorded within these administration reports can also reveal

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<sup>119</sup> *Administration Report for the Police of Bengal for the Year 1878*

<sup>120</sup> See *Administration Report for the Police of Bengal for the Years 1871-1885*

<sup>121</sup> *Police (Beames) Committee Report (1891)*, p. 17

instances where efforts were made to preserve traditional practices. It was noted by the magistrate of Nuddea in 1868 that the general rate varied from two pice to four pice a month and the *chowkidar* received ‘half the wage in *Bhadro* at the early harvest and half in *Pous* at winter harvest.’<sup>122</sup> With the minimum wage set by the Act of 1870 at four rupees it was clear that it was a demand that a largely poor community could not meet. The result was that traditional methods of remuneration continued to be employed. Indeed, a visiting official inspecting *panchayati* accounts in Chittagong in 1878 reported that the practice, as he saw, was to ‘realise by a course of dunning three to six months *after* the time for which salaries are due.’<sup>123</sup> In another example, the deputy inspector general of Dharbhanga, Rajshaye division, described an alternative system, one in which it was usual for members of the *panchayat* to give *chowkidars* a list of those defaulters who had not paid and the amounts that were to be paid. Once the *chowkidar* visited the defaulter and presented him with a receipt:

both parties made their *own arrangements*, with the ryot giving the *chowkidar* so much in grain, so much in cash, or part payment only and coming to some sort of agreement as to how the remaining balance was to be paid.<sup>124</sup>

Furthermore, in the Patna division it was found that *panchayats* could not realise the tax with punctuality because they had to wait until it was convenient for the ryots to pay. Normally payment could only be made after their crops had been harvested. Similarly, in the Bhagulpore district it was noted that *chowkidars* were ‘content, and even preferred, to wait’ until harvest time.<sup>125</sup> What these instances illustrate is an attempt by all members of the village community to preserve the moral economy of

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<sup>122</sup> Proceedings, dated 11 June 1870 in ‘Objects & Reasons of Bills Passed in the Year 1870’ L/PJ/5/105

<sup>123</sup> *Administration Report for the Police of Bengal for the Year 1878*

<sup>124</sup> *Administration Report for the Police of Bengal for the Year 1880*

<sup>125</sup> *Administration Report for the Police of Bengal for the Year 1878*



the village. The Act may have stated that a certain amount had to be paid within a specific period of time. Yet these conditions were simply not suited to the requirements of an agricultural community who were able to pay in kind at times suited to their form of employment. Those serving on the *panchayat* were clearly aware of these conditions, with some openly stating that the inhabitants were ‘very poor and they did not like to seize their goods.’<sup>126</sup> This may have been a poor explanation for the authorities but for a leader of the village serving on the *panchayat*, it was important to recognise the limits of his power. It could be argued that it was in the interests of the village to allow an informal method of payment, largely in kind, to continue. It still provided a form of remuneration for the *chowkidar* whilst at the same time alleviating pressure from an agricultural community whose conditions ensured that a strict compliance with the Act would never be fully possible.

The state was purely concerned with the regular payment of the *chowkidar*. Members of the *panchayat*, on the other hand, had to take into consideration the ability of the village community, as well as their own personal agendas, to meet these state demands. The inspector general of police in 1881, when discussing the impact of the system, noted that any reports of improvement only reached him at the time when the annual report was to be submitted, ‘a most noteworthy circumstance!’ What was recognised by him was that a deeper probe would reveal that the system as it was actually worked by the native people would always be reflective of local conditions and customs rather than the requirements of the state.

The type of self-governance exercised by those serving on the *panchayat* often clashed with the type which was demanded by the state. Although the

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<sup>126</sup> Ibid.

*panchayat* nominated a candidate for the position of the *chowkidar*, the appointment would be made by the magistrate. But as the district superintendent of Dinajpur remarked, 'in effect the panchayat appoint, for they make the post untenable to any chawkidar not appointed by them...they are said to take something for each appointment and sometimes arrange for pay at less than the nominal rate.'<sup>127</sup> Elsewhere, the district superintendent of Hooghly, a district notorious for dacoities, in many cases refused to accept the *panchayat's* nominee having discovered that he had been in prison for dacoity or burglary. The panchayat objected to the district superintendent's action, refused to nominate another person, and used their influence to prevent 'anyone from coming forward for the post.'<sup>128</sup> Furthermore, competition for the office, only 'took place in villages where faction spirit ran high...in these villages the control of the chawkidars is an important matter.'<sup>129</sup>

These examples clearly demonstrate the difference between native and state expectations. The members of the *panchayat* were indeed complying with the law, as the law had stated that nomination was within their control. But the manner in which they chose to nominate, and whom they chose to nominate, directly impacted on the kind of information that the authorities received. Certainly, this was confirmed by the discovery that *chowkidars* were still under *panchayati* influence and only reported what the *panchayat* permitted them to. The general practice, noted the inspector general of police in the Burdwan division, was for the *chowkidar* first to visit the village *panchayat* who would hold a preliminary irregular enquiry. When reports of the crime finally did reach the station, they had been 'modified and facts coloured in such a way by the panchayat so as not to compromise the safety of persons

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<sup>127</sup> *Police (Beames) Committee Report* (1891), p. 17

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

charged.<sup>130</sup> The concealment, rather than the reporting of crime, appeared to be the rule rather than the exception. The authorities, thus, only served to strengthen, rather than weaken, the system in which the *chowkidar* served ‘two masters’. The *panchayat* took the place of the *zamindar* and that too without the latter losing his influence. In other words, the *chowkidar* simply changed masters and as a result continued to be heavily influenced by local powers.

The preservation, rather than the weakening, of the native system led to a heavy reliance by the district magistrate on the *thana* police. This was in direct violation of the Act, which had declared that it was the *panchayat*, and not the police, that was to handle *chowkidari* matters. But with the *panchayats* failing to act as an effective link in the passing of information between watchman and the police, the central aim of the Act, police intervention was always inevitable. Reservations about the questionable conduct of the police in the nomination of the *panchayati* members, including their attempts to make money out of the unpopularity of the post by selling the privilege of exemption or nominating their ‘enemies’ for a position on the *panchayat*, were placed to one side. In 1892, following the repeated failure to infuse public spirit into the *panchayat*, there were attempts to centralise the village watchman and add him to the official police structure. Yet considerations of economy as well as the necessity of preserving the informal network within which the *chowkidar* worked always impeded any efforts to fully centralise the watchman. The only alternative was to maintain a specific type of self-governance, one in which, as the Police Commission of 1902 noted, it was of ‘paramount importance to maintain and foster existing village agencies for police work.’<sup>131</sup>

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<sup>130</sup> Ibid.

<sup>131</sup> *Indian Police Commission 1902-03*, p. 30

This objective was at the forefront of the reforms introduced by Henry Wheeler in 1905, which were designed to raise the status and efficiency of the *panchayat* through the creation of the post of the president. The main feature of this new system was the transfer of control of the village police in all matters except the assistance in the investigation of crime, from the police to the panchayat.<sup>132</sup> They were also provided with certain magisterial powers. But the same difficulties remained. The president, instead of easing the flow of information from the *chowkidar* to the police station, was actually blocking the network. Control being passed over to the president meant that the *thana* still had no contact with the watchman. Added to that, attempts to seek a better form of president proved fruitless as those who were employed proved to be lazy and disinterested in reporting the movement of bad characters. No single president, claimed the superintendent of police, in the district of Khulna, 'used the powers conferred upon him under sections 64, 127 and 128 of the Indian Police Code.'<sup>133</sup> Even in districts where well-to-do presidents from the Brahmin and Kayastha castes were appointed, there was little or no improvement.

Presidents were also directly challenging the authority of the regular police. L. F. Morshead found that presidents, proud of their magisterial powers, were ready to assert their authority in belittling the police – one president even refused to give evidence before the inspector unless he was summoned by the joint magistrate.<sup>134</sup> Furthermore, the system could be abused. In one district, the president had used the

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<sup>132</sup> Henry Wheeler, *Local Self Government in Bengal* (1916)

<sup>133</sup> *Administration Report for the Administration of Bengal for the Year 1909*

<sup>134</sup> *Administration Report for the Administration of Bengal for the Year 1909*

*panchayat* as a platform to promote the *Swadeshi* movement. Presidents could also exercise a very local form of justice.<sup>135</sup>

The system of dual control, whereby the *chowkidar* continued to serve two authorities continued. For this ‘arrangement’ to have worked in their favour, the state, Anand Yang has concluded, would have had to remove the *chowkidar* from local level structures. However, they simply could not weaken local level controls, nor did they really wish to as they already had control of the major instruments of coercion in the form of the army. Smaller instruments such as the village police, they could leave to native intermediaries. Yet how these native functionaries chose to operate directly affected the ability of the *thana* police to gain information relating to crime within the distant interior. To the state, the *chowkidar* reporting directly to the *panchayat*, rather than the police, was a great defect of the system.<sup>136</sup> Yet native intermediaries operated within a system in which power was delegated. It could be argued that members of the *panchayat*, those who had influence, were simply following, as Thomas Metcalf has asserted, behaviours and customs which were natural within an Indian environment, customs that were accepted by the Indian people.<sup>137</sup>

With the Indian social system centring around the themes of kinship and groups trying to build up support in their community, serving in a system in which they simply exercised a supervisory role was of no benefit. Thus, as the British

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<sup>135</sup> The President of the Betkasi Union – a distant and isolated area of the Khulna district whose inhabitants and president were low caste Namasudras – made his house a sort of hajut room, disposing of all sorts of cases and imposing fines as he pleased. See *Administration Report for the Police of Bengal for the Year 1909*

<sup>136</sup> Many districts such as Jessore complained that the creation of another link – in the form of the President – meant that the thana police had lost contact with the *chowkidar* completely. This was of particular concern as *chowkidars* were now required to attend the thana only once a week, thus ensuring deficiencies in the crime reporting process See *Report on The Police Administration in Bengal for the Year 1908*

<sup>137</sup> Thomas Metcalf, *Land, Landlords & The British Raj*

Indian association pointed out in their opposition to the Act of 1870 the “power” offered by the new legislation was ‘just for show.’<sup>138</sup> Not only would they risk alienating village members with the compulsory demands of the Act, but they would not gain influence by serving on such an agency. Authority to oversee the building of roads, sanitation and so forth were of little importance to individuals possessing power and status. The central aim was to build up local support in order to preserve their power, *not* to police the area under their control.

Prior to the passing of the Act in 1870, it was pointed out by one official that the key flaw of the proposed legislation was its focus upon the theory that in each village there was a ‘compactly constituted little community’ ready ‘to our hand with a recognised headman through whom we can work arrangements without being impelled by any collateral influence.’<sup>139</sup> This he recognised was a false perception. The native community, in stark opposition to the Orientalist image of a passive society, was part of a much more complex network in which power was delegated amongst various groups, a network in which influence was dependent upon the control of a number of resources as well as the support of the people. What the British wanted was simply cooperation of the people in the reporting of crime. In other words, what was required was an agency to provide the *thana* police with this information.

It was the *panchayat* that was to fulfil this role and act as the link between *chowkidar* and police. But the inability of the state to fully remove the *chowkidar* from local level systems ensured an uneasy coexistence between the official system planted by the state and the informal networks favoured by the community. That the

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<sup>138</sup> ‘Response of the British Indian Association to the proposed Act, 27 August 1869’, in *Objects & Reasons of Bills Passed in 1870*

<sup>139</sup> ‘Officiating Magistrate of Bheerbhoom, August 1869’ in *Ibid*

balance would often tilt in favour of the latter demonstrates the weakness of the authority of the state in the interior. Indeed, the authorities were forced to admit that crime reporting was actually of an acceptable standard in the district of Bankura, where the Act of 1870 was *not* introduced. Therefore, as long as indigenous groups had space to exercise a level of control, in effect the delegation of power to which they were traditionally accustomed, then they were more willing to cooperate with the state. As one survey found, local leaders were willing to serve the state provided they were given more authority over the *chowkidar* and also addressed as ‘village magistrates’ directly subordinate to the magistrate and not the police.<sup>140</sup> The inability of the state to meet these demands served to highlight another aspect of the Act – to make leading men feel that their post was of significance. To feel as if they possessed power was of no practical use to these men. To exercise fully this power within their own jurisdiction, according to their own traditional practices, was what they were accustomed to. The necessity to maintain a system of dual control in the interior, a system in which the authorities could never fully gain control of the *chowkidar* due to their dependency upon local networks, ensured that the status quo in the village community would always be maintained.

### 3.4 Conclusion

If the police can manage the country without the aid and influence of the zamindars, which was never successfully done, then we may make the chowkidars paid government servants; but if we cannot dispense with the aid of the landholders, we must continue the watchman under their control.<sup>141</sup>

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<sup>140</sup> Bengal Proceedings, Police Department, August 1911, No. 29

<sup>141</sup> Minute by F C Smith, Superintendent of Police, Lower Provinces, in *Police (Bird) Committee Report* (1838), p. xiv

This was the opinion of one police officer in 1838. What is revealing about his observation is that there is no mention of a complete overhaul of the rural network. The purpose was simply to ‘manage’ in the best way possible. In 1870, the government remained in a similar position. The limitations and practicalities of colonial rule would ensure the continuation of state dependency upon local level agencies in the interior. In other words, the authorities could not place the *chowkidar* within the official framework, which would make him a paid government servant. If this was not possible, then officials tried to weaken *zamindari* influence through other means. The aim of the Act VI of 1870, declared ‘revolutionary’ upon its introduction, was to ‘dispense’ with the aid of the landholders by passing on responsibility for reporting crime, and overseeing the remuneration of the *chowkidar*, to the recognised headmen of each village. However, this change either led to a transferral of power and influence, from the landholder to the *panchayat*, or the traditional system remained intact as headmen were usually the agents of the landholders. In neither case was the traditional structure of the village community upset. Nor was the proposal to create one type of *chowkidar*, acting under Act VI and remunerated with a cash salary, fully executed, as the *chowkidar* continued to receive different kinds of remuneration.

If the native community resisted attempts of the state to pass on the costs of maintaining the *chowkidar* during the early days of colonial rule, the same grievance remained after the passing of the Chowkidari Act in 1870. Whether it was during the Bareilly Disturbances of 1816 or the attempts to evade the assessment at the turn of the twentieth century, ‘contribution’ was still perceived as a tax by the native community. What these facts reveal is a sense of continuity, of still trying to



‘manage’, rather than any significant change. Thus, the Act of 1870, and its various amendments thereafter, was far from the innovation it was claimed to be.

For the Act to have been truly innovatory, it would have had to adhere to the principle of self-governance as was recognised by the native community. But innovation was not what the state required; all that was desired was a straightforward process where village agencies could be utilised for police work and to ensure that the *chowkidar* received adequate remuneration. Furthermore, the aim was to ease financial difficulties by shifting the charges for local requirements on to new local taxes.<sup>142</sup> The role of the *chowkidar*, and that of the agencies created to assist him, was simply to report information relating to *crime*. The fact that the government placed importance upon a village agent who was traditionally responsible for crime detecting and reporting within their locality illustrates that the aim was to extract this particular kind of information. And despite calls at the turn of the century to improve local level agencies and to delegate more responsibilities on to them, it was made clear that the only ‘improvement’ required was to ensure that these agencies were manned by people of sufficient education and public spirit who were willing and capable of discharging honorary duties for the State.<sup>143</sup> Thus, the main aim of the agencies that were to act as a medium of friendly communication between the people and state – whether *panchayat*, president or the circle officer– was to act as an effective link that would ensure the smooth flow of information from the interior to

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<sup>142</sup> Henry Wheeler, *Local Self Government in Bengal* (1916)

<sup>143</sup> A Gupta, ‘The Experimental Introduction of The Circle System’ (1911), Departmental Monographs, Asia & Africa Collections, British Library

the government rather than exercise complete self-governance according to their own traditions and customs.<sup>144</sup>

Efforts to reorganise local agencies in order to meet the practical requirements of a colonial government would always be limited in their impact. As Anand Yang has argued, British authority could never effectively transform local agencies as that would in effect have involved completely restructuring local level networks. Indigenous society was one in which many authorities existed, in which there existed different views of crime and justice and one in which faction, village cliques and maintaining the moral economy of the village were crucial. Furthermore, native systems were part of a more flexible network in which groups, whilst recognising the authority of the distant state, still had their own space to exercise their own local 'kingship'. Thus, as Thomas Metcalf has argued, the concern of individuals holding power and influence within the village was not to police the area under their control, for that was not the most important task, but to rally as much support behind them in order to secure their influence amongst the villagers. Following the British model, in which crime and control was vital, would only have led to alienation of the villagers and as a result the loss of position and power within the village.

The response of rural personalities to state institutions would always be defined by these native objectives. The system of the British offered no scope to build power and influence and as a result it would have a limited impact upon the

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<sup>144</sup> The Circle system was introduced following the Commissioners Conference in 1911. The Circle Officer was created to act as the link between the District Officer and the Panchayats, directed to bring the people into closer contact with the District Officer. Created to act as the mouthpiece of the District Officer and as the disinterested advisor to the panchayat and the people, his success was rather mixed with the administration reports still suggesting that the circle officers were ineffective in supervising the president-panchayats. See *Administration Reports for the Police of Bengal 1911-1918*

working of local level systems. Indeed, the Monro Committee of 1883 found that in cases where the 'panchayat were left to collect the tax in a slovenly and slipshod manner on the principle of non interference, membership had not been unpopular. But once the Magistrate insisted upon punctual payment, membership at once became odious.'<sup>145</sup> Even by 1918, thirteen years after the president system was introduced, it had to be admitted that the president had little idea of the amount of crime being committed in his union and seldom endeavoured to organise or initiate measures to control the crime that he *did* know about.

The *chowkidar*, the all-seeing, all-knowing agent, who was a central character for the colonial authorities, failed to meet British expectations of a uniformed, fully disciplined supplementary agent. The dilemma of trying to make this agent carry out the role of an 'official' officer *without* including him within the formal network ensured the continuation of a system of dual control, which required the *chowkidar* to serve 'two masters'. With his rural superior in close proximity, as opposed to the distant state, it was clear which master he would obey. Thus, *chowkidars* cared little about being fined and punished according to the system introduced by the British as very few of them depended solely on their salaries, and still considered *panchayats* to be their proper masters.

A further drawback for the colonial rulers was that the native image of a *chowkidar* could differ widely from the image held by the authorities. The post, in the native system, was 'still often hereditary, and more than once held by infants, whose duties were performed by proxy.'<sup>146</sup> In 1889, in the district of Nuddea, a

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<sup>145</sup> *Self Government in Rural Bengal: A handbook containing the Bengal Village Self-Government Act, 1919, and other laws and rules in force in local areas to which that Act is extended, with notes by a District Officer* (Calcutta: Cambrey & Co, 1920), p. 24

<sup>146</sup> John Henry Tull Walsh, *A History of Murshidabad District, Bengal* p. 33

woman was found acting as a *chowkidar* and there was some trouble about getting her dismissed, as reports were unanimously in her favour and the office is generally looked upon as hereditary.<sup>147</sup> A similar case occurred in Dinajpore where the *chowkidar* was a small boy whose mother was said to take care of him when he went on rounds at night. In actual fact, however, there were no rounds at all but no one raised any objection.<sup>148</sup> Indeed, it was noted by one official that many villagers actually had no *chowkidars*, a 'nominal man being put forward as the occasion required.'<sup>149</sup> Furthermore, it was also suggested that *chakeran chowkidars*, those who received land rather than money payment, were more contented and respected by their fellow villagers, as the possession of land, hereditary in some cases, served as a common bond between the watchman and other members of his community.<sup>150</sup>

Therefore, native attitude towards the issues of power, authority and self-governance were differed in many ways from those of the colonial rulers. The broader objectives and limitations of British rule in India also ensured that theirs was a distant authority, visible but interpreted by the village community in ways that were conducive to their own needs and interests. The refusal of village agents to act as employees of the state meant that the image of the sole and superior authority could never effectively be rooted in the native mind. As a result, the state continuously depended upon the police, who remained *the* sign of British rule, might and authority. Certainly, the entire purpose of the Act VI of 1870, and subsequent legislation, had been to utilise village agencies for police work. Self-governance according to the traditions of the people would always be a secondary concern. With

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<sup>147</sup> *Police Administration in Bengal for the Year 1899*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Police Administration in Bengal for the Year 1899*

<sup>150</sup> *Police Administration in Bengal for the Year 1882*

local agencies failing to fulfil this role, the intervention of these agents of the state in rural matters would always be a necessity. Even the much celebrated Village Self Government Act of 1919, which was to ‘give the *thana* police no authority whatsoever over rural agencies’, could not limit their interference in rural affairs. As with previous legislation, that Act could not solve the recurring problem of the *chowkidar* serving two masters – the rural elite on the one hand, the state on the other.<sup>151</sup> Perhaps acknowledging that their distance gave the rural elite the upper hand, the state would always have to employ the services of the police, ‘the only visible representatives of the power of the government in the eyes of the great majority of the people.’<sup>152</sup> Visible the authority may have been, but the response of the native community to the attempted reorganisation of their rural networks, indicated that it was an authority that would always be secondary to that exercised by the rural elites of the village community. The *chowkidar* may have been required to act as the unofficial policeman of the state, and the replacement of his traditional ‘vile’ dress with the instantly recognisable blue ‘*puggree*’ and antique bludgeon may have signified as much, but he would always remain tied to local level networks which the state could never effectively weaken. Furthermore, as the next chapter will argue, the police themselves were closely tied to the moral economy of their locality, which would further undermine the network of control.

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<sup>151</sup> It was found that, even up to the 1930s *chowkidars* continued to work under dual control. They found themselves to be in the unfortunate position of being caught between the *thana* police and the Union Board, which was, post 1919, now in charge of *chowkidari* affairs. In the first instance the *chowkidars* were the servants of the Board, as the Board was in charge of recommendations and pay. However, they still had to serve the *thana* police as appointment was only possible after a favourable report was submitted by the police officer at the station to the District Magistrate- to ensure that a positive report was submitted, *chowkidars* still had to attend to the demands of the officers. And as their predecessors before them, these *chowkidars* could use this dual control to their advantage by serving and manipulating both Board and Sub Inspector. See Naresh Chandra Roy *Rural Self Government in Bengal* (Calcutta: Calcutta University Press, 1936)

<sup>152</sup> ‘FP Dixon, Indian Civil Service, Secretary to the Board of Revenue, East Bengal & Assam, No. 29, dated 7 August 1911’ Bengal Proceedings, Police Department, 1911

## Chapter Four: The Police and the State- Imperial Objectives versus Native Expectations, 1860-1914

In 1886 an unnamed sub inspector of police in the district of Bhagalpur was discovered ill-treating two bad characters in order to compel them to give information regarding a case of robbery. During his trial, it was noted by the trying magistrate that the villagers residing within the officer's jurisdiction displayed a marked sympathy towards him. This observation had followed similar remarks made by the district superintendent of police who had stumbled upon the assault quite by accident during his visit to the village, the purpose of which was to enquire about certain thefts which had not been reported.<sup>1</sup> The sub inspector was convicted and fined as a result of his conduct, his punishment reflective of a legal system in which the role of the policeman was closely defined and restricted. Yet the manner in which the case developed following his conviction would also demonstrate how adaptive that system had to be to the local environment. The behaviour of the local community may have been disregarded at the first trial but during the appeal lodged by the officer against his conviction, local opinion would become a central factor in his reinstatement. The judge concluded the case by stating that 'public opinion of the place demands that bad characters be intimidated....for an omelette eggs must be broken and one must not look with too curious eyes upon every small excess committed by an investigating officer.'<sup>2</sup> The sub inspector was duly permitted to return to his post and resume a career that had spanned eighteen years.

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<sup>1</sup> Upon his arrival, the superintendent had noticed the willingness of the community to see the coercive methods employed by the sub inspector, as well as the apathy of the persons beaten, thereby indicating that ill treatment of bad characters was simply a 'matter of course' in such circumstances.

<sup>2</sup> *Police Administration Report for the Lower Provinces of Bengal for the Year 1886*, p. 10

The main purpose of this chapter is to examine the ways in which the official network of police was continuously remoulded according to time and circumstance. The chapter is divided into four main sections. Section one considers the various restrictions which the law imposed upon the police as well as some of the ways in which they deviated from official procedure. Section two critiques the definition of corruption, the aim being to re-consider the stereotype of the ‘corrupt, brutal Indian police.’ Section three will consider the ways in which the colonial police readjusted official procedures to meet the conditions and requirements of the locality. The fourth section will examine the ways in which the same network was readjusted by the colonial government during times of political upheaval, when the ordinary machinery of law was suspended in favour of repressive legislation. By examining these issues, the intention is to emphasise the flexibility of the ordinary machinery of law and order, which was adapted throughout colonial rule, in order to meet the demands of both state and local society.

Various studies have argued that the unpopularity of the police was directly linked to their primary role of defending the colonial state. David Arnold has offered valuable insights about the nature of colonial policing and has concluded that the colonial state, where and when it mattered most, could be decisive and ruthless.<sup>3</sup> In a similar vein, Anandswarup Gupta has argued that defects of the police lay in the fact that they were required to focus on crimes which were a direct threat to empire rather than focus on their primary role of detecting and preventing crime.<sup>4</sup> David Campion, in his examination of the conflicting dilemmas which faced the colonial police in the United Provinces, has attributed the shortcomings of the police to the incompatibility

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<sup>3</sup> David Arnold, *Police Power & Colonial Rule: Madras, 1859-1947*

<sup>4</sup> Anandswarup Gupta, *The Police in British India: 1861-1947*

of their twin duties – preserving political stability on the one hand and maintaining public safety on the other. Coercion and consent, Campion argues, were the two conflicting demands which defined policing in a colonial context. ‘For the policeman to do one of these jobs well’, he concludes, ‘was invariably to make the other job more difficult.’<sup>5</sup> Michael Silvestri, in a similar vein, has maintained that the policeman remained a detested figure in colonial society.<sup>6</sup> The dilemmas faced by the colonial police are also present in the postcolonial period and David Bayley has pointed out that the basic structure of the police has remained unchanged since 1861.<sup>7</sup> Kirpal Dhillon, in contrast, has linked the repressive nature of the Indian police to the ‘ruler supportive ethic’ which predates British rule.<sup>8</sup>

The focus of existing studies relating to colonial policing is upon the constraints and dilemmas faced by the police within the empire. However, it is also necessary to examine in closer detail the ways in which the ordinary police officer operated in practice, ways that did not necessarily involve the policeman employing brutal, physical coercion. If his status as a supplementary agent allowed the *chowkidar* to, in a sense, escape the official gaze of the state, the policeman was at the centre of a colonial network whose requirements often clashed with the expectations and demands of the local population he was to serve. Perhaps more emphasis can be placed upon the ways in which the local police helped to maintain the moral economy of the area under their control. As the example cited above

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<sup>5</sup> David A. Campion, ‘Authority, accountability and representation: the United Provinces police and the dilemmas of the colonial policeman in British India’ in *Historical Research*, volume 76, number 192 (May, 2003), p. 236. The interplay between policing in the metropole and the colony, and the transferral of ideas between the two sites, is also noted by Campion

<sup>6</sup> Michael Silvestri, ‘The Dirty Work of Empire: Policing, Political Violence and Public Order in Colonial Bengal, 1905-1947’ (Unpublished Thesis: Columbia University, 1998)

<sup>7</sup> David H. Bayley, *Police and Political Development in India* (Princeton: Princeton University Press, 1969)

<sup>8</sup> Kirpal Dhillon, *Defenders of the Establishment: Ruler- Supportive Police Forces in South Asia* (Simla: Indian Institute of Advanced Study 1998)



concerning the rather fortunate sub inspector of Bhagalpur demonstrates, official procedure was often at odds with public opinion. The policeman could not just simply ignore this public opinion. Indeed, the fact that the sub inspector managed to keep his post successfully for eighteen years suggests that it was not only achieved by resorting to oppressive practices. It also indicates awareness by the officer that a balance had to be maintained without alienating the local community, who in this case demanded more than the routine questions which were initially put forward to the two individuals by the sub inspector.<sup>9</sup> At the same time, his lengthy tenure in the force could also be the result of recognition by the colonial authorities that their limited reach within the interior always required acts of leniency such as the one demonstrated above.<sup>10</sup> The difficulties he faced in adapting the official system to the conditions of village society, and indeed the ways in which he could distort the imperial system to meet the needs of the local society, thus forms an important part of this chapter.

Leniency and compromise were features of the system of criminal administration which were quietly tolerated in times of peace. They would disguise the shortcomings of the official network of policing whilst allowing the local police to adapt the system according to need. During periods of tension, however, these shortcomings could not be concealed so easily. However, the ‘physical and psychological strain’ mentioned in the memoirs of retired police officials, suggests that ruthless coercion and force were not the only features of a department that was required to maintain civil order. The partition of Bengal in 1905 was one such event

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<sup>9</sup> The sub inspector, the judge noted, was satisfied by putting questions to the two men but the community considered these methods to be careless and inefficient.

<sup>10</sup> The outcome of the appeal was welcomed by a senior police official, Officiating Inspector General J.C. Veasey, who described the final outcome as an act of common sense and one in which he saw no reason to interfere.

which sparked off a politically tumultuous period that threatened to disable the colonial administration. The *Swadeshi* movement and the subsequent aspirations for self-rule allowed the Indian National Congress to ‘make the cause of Bengal, India’s cause.’<sup>11</sup> However, the rise of terrorism in the years following partition meant that the ‘government was faced with what seemed like a revolution.’<sup>12</sup> As revolutionary terrorism gathered pace between 1907 and 1917, and as criminality became a prominent feature in Indian politics, the ordinary machinery of law and order created a number of obstacles for the colonial authorities and it was the police who found themselves at the centre of criticism and controversy throughout the campaign to suppress the movement. The ordinary system of law, which could be quietly adapted by the police in times of peace, worked against them during times of political tension. How this impacted on the manner in which the force operated will be considered in the final section of this chapter.

#### **4.1 The Policeman: A ‘Byword for Oppression’**

Considered as the second link within the system of criminal administration, the colonial police force was an integral part of the criminal justice system. As the most visible representative of colonial rule in direct contact with the native population, the policeman was at the very centre of an official network governed by Act V of 1861, which had established the police as a separate department organised, trained and controlled by its own officers. In effect, the aim of the police, with its clearly defined posts separated by rank and race, was to ‘provide a strict, minute and

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<sup>11</sup> M.N. Das, *India Under Morley and Minto: Politics Behind Revolution, Repression and Reform*, (London: George Allen & Unwin, 1964), p. 89

<sup>12</sup> Ibid.

incessant supervision in a gradually widening circle over every policeman.<sup>13</sup> With legislation providing strict procedures regarding conduct in the reporting of crime, investigation and arrest, the policeman was entrusted with enforcing the rules and regulations of the colonial state. The policeman proved to be an indispensable agent for the British authorities primarily because he was the symbol of foreign authority. Furthermore, in the vast system of criminal justice composed of police, courts and prisons, argues criminologist S.K. Ghosh, it was the policeman who 'largely determined what the system would do since he decided who for the most part would come into and set the terms for subsequent deliberations.'<sup>14</sup>

Unlike the *chowkidar*, the policeman was completely incorporated into the official network of the state, thereby ensuring that his actions were subject to closer scrutiny. He was governed by a whole host of rules and regulations intended to closely regulate and control him at every stage of the investigative process.<sup>15</sup> Within this network, he was completely subordinate to the magistrate who determined the guilt of the accused, following an examination of the evidence forwarded by the police. What was also stressed, under the Indian Evidence Act of 1872, was that no confession made to a police officer was admissible as evidence. Evidence could only be admissible if recorded by a magistrate, who also had to ensure that statements made to the police were made voluntarily. Any confession secured by the police through force was forbidden and punishable by law.

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<sup>13</sup> 'The Bengal Police' in *Calcutta Review*, 59: 118 (1875: October), p. 379. The police were divided into superior and subordinate ranks, the former consisting of European officers whilst the latter was largely filled by natives.

<sup>14</sup> S.K. Ghosh, *Encyclopaedia of Police in India* (New Delhi: Ashish Publishing House, 1993), p. 917

<sup>15</sup> Sections 156 to 174 of the *Criminal Code of Procedure*. Upon receipt of information, the officer in charge of the station was to reduce it into writing and take the signature of the person reporting. After the filing of this first information report, the officer would proceed to the spot to investigate the circumstances of the case. During the investigation he was to submit to the Magistrate a daily diary setting forth the time the information reached him, the time at which he began and ended his investigation and the places visited by him. See also *Bengal Police Manual* (various editions)

The importance of the police as a key agency within the colonial administration contrasted with a recurring negative stereotype of the officer. In various types of records, whether official records or memoirs, what constantly emerges is the image of the police as oppressive, corrupt and brutal. It was acknowledged that drill and discipline had made British authority visible in the interior following the establishment of the New Police.<sup>16</sup> Yet, the image of the subordinate policeman, the one official of the government who was in continuous contact with the native public, was still marred by allegations of torture and corruption. It was an issue that was raised in the House of Lords in 1911, where it was recognised that the practice of police ‘working for confessions in gross abuse of their powers’ was still a pressing concern.<sup>17</sup>

The negative stereotype of the police, one in which their brutality and the inefficiency of the force were emphasised, endured precisely because the police operated outside the official network of control of which the force was a central part. It was the ability of the police to conceal information from the official records which troubled the authorities. The misuse of what was known as the private diary was a particular cause for concern. Amongst the many technical and lengthy procedures to be followed by the investigating officer, he had to record statements of witnesses under two different sections of the Criminal Code of Procedure, one of which could be cross examined in court. The other statement was recorded in the private diary, which was not open to public viewing. The impact of such a ruling allowed the private diary to be used as a device to conceal rulings, as happened in the case of

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<sup>16</sup> ‘Those accustomed to the slouching, slovenly gait of the old Burkandaz as he waddled to his post’ noted the Inspector General C.F. Carnac in 1863, ‘behold with astonishment the Head Constable’s party as it marches along in close file, with quick military step’ *Second Annual Report of the Working of the Civil Constabulary, Lower Provinces for the Year 1863*

<sup>17</sup> ‘Debate in House of Lords: Police Torture, dated 16 March 1911’ in L/PJ/6/1070, File 831

*Sheru Shah & Others versus Queen Empress*.<sup>18</sup> In this particular case, it was argued by the defence that statements eligible for cross-examination were purposefully recorded by the investigating officer in his private diary so as to avoid the necessity of producing the statement in court.

Nor were witness statements recorded satisfactorily. Such statements were crucial as evidence in any trial yet it was often found that they had been recorded by subordinate officers of low educational attainment.<sup>19</sup> The magistrate of Howrah, F.W. Duke, found that officers made 'rough notes in the first instance, and wrote up what purport to be statements hours or days afterwards.'<sup>20</sup> The statements recorded by barely literate officers could be labelled as 'garbled nonsense' but the fact that they placed enormous power in the hands of the police officer could not be ignored.<sup>21</sup>

The manner in which the subordinate police chose to work within the official system had a direct impact on statistics relating to crime reporting and the outcome of cases investigated. In 1891, John Beames concluded that upwards of 'seventy percent of cases went unpunished and at least ninety percent of the most dangerous offences against property remained undetected.'<sup>22</sup> Many people chose not to report

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<sup>18</sup> See 'Sheru Sha & Others versus the Queen Empress, dated 24 March 1894' in *Calcutta Law Reports*, p. 642

<sup>19</sup> Beames had found in his findings that seventy percent of cases were handled by semi-literate Head Constables. In 1911, it was reported in the House of Lords that sixty eight percent of the ordinary constabulary in Bengal was wholly illiterate

<sup>20</sup> 'F.W. Duke, Magistrate of Howrah to Chief Secretary of Government of Bengal, number 148, dated Howrah 24 November 1897' in Bengal Proceedings, Judicial Department, March 1898

<sup>21</sup> F.W. Duke recalled a case where the police reached the spot during the evening and recorded by light of a lantern what was supposed to be the full statement of four men, all badly wounded, lying on the roadside near the scene of the occurrence. 'What' the men were in a position to state, he recalled, 'or what detail it was probable that the police would enquire into under the circumstances can only be imagined'. See *Ibid*. In a similar case, Judge Staley of Hooghly recalled an incident in his previous post in the district of Backergunge, three years previously. He recalled that 'when suddenly going out of office, he found a police constable sitting and reading over to a man about to give evidence in an important Sessions case in my Court what the witness had said to the police, obviously to make the witness say the same thing in my court'. See 'Letter from the Chief Secretary to the Government of Bengal to the Secretary to the Government of India, dated 20 December 1897' in *Ibid*.

<sup>22</sup> *Police (Beames) Committee Report* (1891), p. 1. Throughout the 1890s the position of the police became even more troubled as crime against property, person and the state increased steadily,

the occurrence of a crime to the police, with former police official Charles Elphinstone Gouldsbury stating that not one half of murders committed were 'ever brought home to the criminal.'<sup>23</sup> Of the cases which were investigated and passed on to the court, many broke down due to the manner in which the police recorded information, which led to many cases ending in an acquittal.<sup>24</sup>

The colonial policeman, therefore, was an agent marred by allegations of corruption and oppression, an agent whose inefficiencies distorted the system of criminal administration. Yet, one also has to examine in closer detail the conditions within which the policeman worked, both in his official post and the local rural environment of which he was part. If corruption can be defined as the abuse of public office for private gain, then the conduct of the policeman can be termed as such. But if public office determines the extent of corruption, then it is important to consider the nature of that public office. The next section will examine the different interpretations of corruption in different contexts.

#### **4.2 Corruption, the Policeman and the Colonial State**

The impact of corruption upon the functioning of democratic institutions has attracted much scholarly attention. Political scientist Joseph Nye has defined corruption as 'behaviour which deviates from the normal duties of a public role because of private regarding, pecuniary or status gain.'<sup>25</sup> Several scholars have since

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although this was said to be a result of better reporting by the police, whilst difficulty of conviction remained. In 1892 Bengal experienced the heaviest outbreaks of serious crime resulting from high food prices and in 1893 there was a continued increase in heinous, including burglary and dacoity, offences. See *Police Administration Report for the Lower Provinces of Bengal for the Years 1890-1899*

<sup>23</sup> Charles Elphinstone Gouldsbury, *Life in the Indian Police* (London: Chapman & Hall, 1912), p. 72

<sup>24</sup> Deputy Magistrate M Mackie found that in his district only fifty two or fifty six percent of criminals sent up were convicted. See 'Appendix', in *Police (Beames) Committee Report* (1891), p.iii

<sup>25</sup> Joseph Nye, 'Corruption & Political Development: A Cost Benefit Analysis' in *American Political Science Review*, 61, (June, 1967), p. 417

applied the western description proposed by Nye to the non-western environment. In other words, it is this particular definition that is popularly used to measure the prevalence of corruption and its effects upon the administration of government. Within the Indian context, A. Ranga Reddy, through his discussions about crime and corruption in the developing state, has placed emphasis upon the negative impact that the abuse of public office has upon social, economic and political development.<sup>26</sup> R.K. Raghavan has reached similar conclusions, arguing that corrupt practices within the Indian police force run counter to the democratic processes of the country. S.K. Ghosh and Arvind Verma, in their respective studies have also pointed to the brutality, oppression and corruption of a police force that has remained unchanged in organisation, structure and attitude since the days of the British Raj.<sup>27</sup>

The solutions to the problem of corruption may vary but the studies share similarities in two important respects. First, is the shared view that the flaws of the modern police in India can be attributed to the colonial objectives which ultimately determined how the police would function. That these objectives, centring around the maintenance of power for the ruling elite, have remained unchanged in postcolonial India is also emphasised. The second similarity is the labelling of the police force as 'corrupt' because officers are seen to deviate from the rules and regulations as set in the codes of law and, as a result, abuse their public office. In other words, the western definition of what is, and is not, 'corruption' is accepted without question by the authors of these studies.

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<sup>26</sup> See A. Ranga Reddy, *Dimensions of Crime & Corruption in India* (New Delhi: Serials Publications, 2005)

<sup>27</sup> See S.K. Ghosh, *Encyclopedia of Police in India* (New Delhi: Ashish Publishing House, 1993) and Arvind Verma, *The Indian Police: A Critical Evaluation* (New Delhi: Regency Publications, 1995). See also Arvind Verma, 'The Cultural Roots of Police Corruption in India' in *International Criminal Justice Review*, 22, Issue 3, (1997) pp. 264-279

The use of western definitions to measure levels of progress and growth has not, however, prevented certain scholars from offering their own critique of the term. Indeed, a critical analysis of the term within the context of the developed society has been the topic of much discussion. Arvind Jain in his study has concluded that ‘how corruption is defined actually ends up determining what gets modelled and measured.’<sup>28</sup> This is a view which has been echoed by David Redlawsk and James McCann in their study on corruption existing within the legal institutions of the American state. They, in opposition to the view proposed by Joseph Nye that corruption equates lawlessness, have stated that there is ‘more to corruption than breaking the law...many behaviours that are technically legal might nonetheless break well established communal norms.’<sup>29</sup> Furthermore, they have added that a rigid definition of corruption is problematic as it is often perceived in different ways by various groups.<sup>30</sup> In a similar vein, Lawrence Sherman, in his analysis of corruption within the ranks of the American police force, has stressed that although the police may be subjected to political influence, they nevertheless must also follow the norms of the local community. His examination of both public attitudes towards the police, as well as the beliefs of the officers themselves, has led him to the conclusion that the community tolerates, and can even support, behaviour labelled as corrupt.<sup>31</sup>

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<sup>28</sup> Arvind Jain, *The Political Economy of Corruption* (London: Routledge, 2001), p. 4

<sup>29</sup> David Redlawsk and James McCann, ‘Popular Interpretations of Corruption and Their Partisan Consequences’ in *American Political Scientist*, volume 27, Number 3, (2005), p. 45

<sup>30</sup> In an excellent example of class difference, Redlawsk and McCann state that for upper class citizens, ‘gifts and special favours’ are a perfectly acceptable aspect of the legal system, in contrast to lower income groups, who expect more from ‘altruistic governments’ See Ibid.

<sup>31</sup> Public opinion polls which suggest the contrary, he argues, simply conceal the possibility that respondents may be covering their true feelings. Instead, in their anxiety to appear as ‘law abiding citizens’ they provide answers that they feel are in line with state law. See Lawrence Sherman, *Scandal & Reform: Controlling Police Corruption* (Berkeley: University of California Press, 1978), p.31



Crucially, he has added, this tolerance expressed by the community, ‘encourages the police to define its behaviour as proper rather than deviant.’<sup>32</sup>

The shortcomings of a definition that fails to take into account alternative perceptions of other groups are made even more apparent when considered within the context of the non-Western environment. The prevalence of corruption in developing states, it is argued, is the result of the difficult transition from one moral code to another. What makes corruption so visible in developing nations is the expansion of democracy, which sharpens the distinction between the private and the public sphere. What is popularly considered as an accepted ‘social practice’ transforms into a corrupt one once the switch between spheres occurs. Theodore Smith has examined how traditional, informal practices of the Javanese community came to be redefined with a critical gaze by a colonial establishment intent upon creating an autonomous rationality of the state, a single authority which the subjugated population would obey. Smith has concluded his study by stating that what occurs is a new definition of corrupt practices rather than a change in traditional behaviour.<sup>33</sup>

The impact of foreign definitions of power and authority upon indigenous practices has been discussed by Sandra Freitag and Radhika Singha, in their respective studies.<sup>34</sup> They have pointed out that whilst in pre-British India, power was delegated and dispersed amongst many groups and the criminal still remained an active member of society, the arrival of the British ushered in a period of attempts to establish a distinctly colonial conception of justice and authority. It was one in which

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<sup>32</sup> Ibid.

<sup>33</sup> Theodore Smith, ‘Corruption, Tradition & Change’ in *Indonesia*, Volume. 11, (April, 1971), pp. 21-40

<sup>34</sup> See Radhika Singha, *Despotism of Law: Crime & Justice in Early Colonial India* (Oxford: Oxford University Press, 1998) and Sandra Freitag, ‘Crime and Local Authority in North India’

the state alone controlled the instruments of coercion and redefined criminal behaviour, thereby labelling a whole host of activities as ‘criminal’. This process seemed complete with the codification of the law in the mid-nineteenth century, with the introduction of a vast array of rules and regulations designed to control every aspect of policing and at the same time ensuring that British authority superseded all other indigenous forms of control. Thus, it was the policeman, as the official employee of the state, who was expected to enforce the codes of law which upheld this single, colonial authority. He was required to ensure that the native community adhered to a new legal order, one that was designed to replace the symbolic authority of the local *zamindar* with the laws and codes of the British rulers. The difficulty faced by the policeman in this role was clearly expressed by the inspector general of police in 1866, when he referred to a certain case in Shahabad in which the police, having arrested certain men now classed as ‘Budmashes’, faced great opposition from their *zamindars*, ‘who at once came forward to certify they were the most respectable of characters.’<sup>35</sup>

The response of the native community to the establishment of new forms of control, including the policeman who is subjected to this type of transformation, can be considered in a number of ways. Lauren Benton, in her examination of colonial legal regimes, has put forward the argument that conquered groups can respond in ways that include ‘accommodation, advocacy within the system, subtle delegitimisation and outright rebellion.’<sup>36</sup> Colin Leys, in his excellent analysis of corruption in modern African states has examined the different ways in which

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<sup>35</sup> See *Police Administration Report for the Lower Provinces of Bengal the Year 1866*

<sup>36</sup> Lauren Benton, *Law & Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), p. 2

corruption can be interpreted by those employed by the state and has argued that they have their own idea of what the rule should be:

it may be the same as that of the official (they may regard themselves as corrupt); or quite different (behaving honourably according to their own standards and regard critics' standards as irrelevant; or they may be men of 'two worlds' partly adhering to two standards which are incompatible, and ending up exasperated and indifferent...these options affect the whole society who may have the same attitude.<sup>37</sup>

Leys is keen to emphasise that corruption involves the breaking of some written or unwritten rule and that it can be viewed in a number of ways by different groups. One can also add that the state itself can redefine the term, even allow corrupt practices to continue, to suit its own ends. Some colonial observers sympathised with the plight of the native policeman. As one official noted, in 'traditional systems a bribe was not a bribe but was custom...but in our British system they have to be persuaded that whatever the contractual custom elsewhere, their services are now free to all...only possible method was in terms of black and white.'<sup>38</sup>

The very nature of colonial rule, however, ensured that, far from being 'black and white, right or wrong' the process of 'corruption' was one that could not easily fit into rigid categories. The definition of corruption, of behaviour undermining the authority of the state, may have centred around clear policies and whether they had been clearly broken yet these 'clear' rules were very much dependent upon wider imperial objectives and constraints which required the state to frequently 'bend the rules'. The following section aims to consider these wider objectives and the ways in which the policeman could respond to them.

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<sup>37</sup> Colin Leys., 'What is the Problem With Corruption?' in *Modern African Studies*, volume 3, Issue, 2, (1965), p. 221

<sup>38</sup> 'Papers of Walter Cyril Holman, District Superintendent of Police, Chittagong Division 1899-1924' in Mss Eur D864

### 4.3 The Police, the Locality and State Objectives

Collaboration and compromise proved to be a necessity as ideology always came second to the practicality of running a lightly manned Empire.<sup>39</sup> And that too in the most cost-effective manner possible.<sup>40</sup> Matters of economy in particular were always a central concern, especially when they involved the question of improving the force. The inspector general of police in 1911 ruefully noted that despite the pledge of the police commission held in 1902 to spend one million pounds on police reform, the provincial governments within India only received a ‘few *lakh* rupees... the Bengal force received only twelve *lakhs*.’<sup>41</sup> Above all, the practicalities of empire ensured a focus on activities threatening the state, as opposed to ordinary crime affecting person and property.<sup>42</sup>

The need to maintain order went on to influence attitudes about the type of policeman to be recruited. ‘The Bengalis’, noted former Bengal official Walter Cyril Holman, ‘viewed uniform as a form of fancy dress. Whilst other Indians wear attractive *pugrees*, the Bengali makes do with his umbrella.’<sup>43</sup> Michael Silvestri has pointed out that ideas of ‘martial’ and ‘non martial’ races led to an influx of up-country men from other parts of the colony to police a Bengali population considered

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<sup>39</sup> The Under Secretary of State noted in 1911 that the Police in India were an indigenous agency numbering 177,000 men with only 500 European superintendents. They dealt with a population of 244 million spread over an area of eleven million square miles. See L/PJ/6/1186, File 3218

<sup>40</sup> Indeed, the discussions prior to the establishment of the New Police in 1861 partly centred around the necessity of finding an alternative to the ‘expensive’ military police. See ‘Papers Relating to the Reform of the Police in India’, *Calcutta Review*, 41, (1861)

<sup>41</sup> *Police Administration Report for the Year 1911*

<sup>42</sup> The legal institutions of the state, argues Sandra Freitag would be constructed in a manner that ensured the coexistence of the ordinary overt rule of law, with its emphasis upon ordinary crime, with the covert ‘alternative legal structure’ which emphasised group control. See Sandra Freitag, ‘Crime in the Social Order of Colonial North India’, *Modern Asian Studies*, volume 25, number 2 (1991), pp. 227-61

<sup>43</sup> ‘The Bengalis’ noted former Bengal official Walter Cyril Holman, ‘viewed uniform as a form of fancy dress. Whilst other Indians wear attractive *pugrees*, the Bengali makes do with his umbrella.’ See, ‘The Papers of Walter Cyril Holman’ in Mss Eur D864

‘feeble and effeminate.’<sup>44</sup> The Bengali, Silvestre has added, was seen to dislike the drill and discipline that policing involved and that as a result, the force was a predominantly non-Bengali one. Thus, the police, and the rule of law it was to implement may have been at the very centre of a campaign by which the British sought to legitimise their rule and shape the social order of native society.<sup>45</sup> However, it was very much shaped, and reshaped, according to broader imperial concerns. As Peter Robb has concluded, the police remained a ‘largely visible, symbolic representative of power and order...a marker of the importance of the State.’<sup>46</sup> It was the visibility of British authority, to be seen in the form of the policeman who would be in direct contact with the native population, which was of utmost importance.

The broader considerations of empire ensured that the public office of the police was a largely undesirable one for the native policeman. There was a need to preserve order as cheaply as possible.<sup>47</sup> This meant that for the native policeman, the post would remain poorly paid, involve poor working conditions as well as the constant vilification by the state. Upper caste individuals found the post distasteful because, as pointed out by one British official in his memoirs, a high caste Brahmin officer had to perform acts which were in conflict with his caste beliefs. He was required to arrest persons of a lower caste and even come into contact with a corpse, both acts which ‘made him unclean...when he returned to his quarters he would have

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<sup>44</sup> Michael Silvestri, ‘The Dirty Work of Empire: Policing, Political Violence and Public Order in Colonial Bengal, 1905-1947’ (Unpublished Thesis: Columbia University, 1998)

<sup>45</sup> In the words of David Arnold and David Killingray ‘ideologies of imperial rule that informed social construction as well as political domination’. See David Anderson and David Killingray (eds.), *Policing the Empire* (Manchester: Manchester University Press, 1991), p. 9

<sup>46</sup> Peter Robb, ‘The ordering of rural India: the policing of nineteenth century Bengal and Bihar’ in David Arnold and David Killingray, *Policing the Empire* (Manchester, 1991), p. 141

<sup>47</sup> The Moral & Material Progress Report of India, 1917-1918, concluded that it was impossible to raise the standards of a cheaply run force. In 1916, the total cost of the Civil Police was £4.4 million, which worked out at only 4d. per head of population. Cited in Anandswarup Gupta, *The Police in British India: 1861-1947*

to purify himself with ablutions and prayers.<sup>748</sup> In 1891, John Beames in his official report on the force in Bengal, had noted that the constable, paid only six rupees, was forced often to ‘undergo great fatigue engaged in escort duty, be badly lodged and be compelled to drink indifferent water.’<sup>749</sup> He added that economic necessity would form the main reason behind the decision to enter the force. It was only in districts where food and labour were cheap, he continued, that men of a respectable caste were ready to enlist as constables. The same could not be said in suburban districts such as Hooghly and Howrah, where the wages of unskilled labour could meet the high expense of living in these districts. Unskilled labour was also seen to be a more attractive option when compared to the ‘heaviest and most irksome work that a policeman is called upon to do.’<sup>750</sup> By 1918, the chief secretary to the government of Bengal noted that despite an increase in pay, it was ‘insufficient for the class of men required and that it does not suffice to attract even the better classes of Anglo Indians who earn more on railways and in mercantile firms.’<sup>751</sup>

Furthermore, subordinate officers had little contact with their superiors, with the district superintendent of police often managing to inspect the stations within their jurisdiction only once or twice a year. These visits, when they occurred, rather than closely examining how the police went about their duties, simply focused on the outward appearance of the police buildings as well as that of the police officers themselves. The check on appearance, on ensuring that authority was at least visible,

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<sup>48</sup> Samuel Thomas Hollins, *No Ten Commandments: Or Life in the Indian Police*, p. 81. Another official would also offer an insight into how issues of caste affected the relationship between certain officers. One low caste Sub Inspector, he recalled, reprimanded a Brahmin constable in his presence, but upon the superior ‘turning away, the Sub Inspector got down on his knees and begged for forgiveness’. See Charles Elphinstone Gouldsbury, *Life in the Indian Police* (London: Chapman & Hall, 1912), p. 251

<sup>49</sup> *Police (Beames) Committee Report* (1891), p. 16

<sup>50</sup> *Ibid.*

<sup>51</sup> ‘Reorganisation of Subordinate Police Establishment’ in L/PJ/6/786, File 2024

was often the purpose behind official visits. Indeed, it must be noted that the district superintendent himself was restricted in his role as he continued to act in subordination to the district magistrate. The government, upon the introduction of the new police in 1861, may have emphasised the separation of judicial and executive functions, but the fact remained that the power and influence of the district magistrate never quite diminished. Magistrates in different districts continued to adapt the police according to their own model, resulting in a lack of uniformity within the force. The magistrate justified his interference in police affairs by arguing that as native society was adapted to despotic rule, all functions of administration had to be placed in the hands of one official. In other words, the district magistrate considered himself as the rightful 'king of his district', and considered his competitor, the police, with contempt and disdain.

The response of the subordinate officer to a post associated with poor pay, low status and constant condemnation took various forms. Of course, he could employ visibly corrupt and violent methods against members of the native community. In other instances, he acted in accordance with his own standards. Former police official Edmund Cox recalled an interesting case in his memoir in which one subordinate 'openly took bribes'.<sup>52</sup> Hidayat Ali, he continued, would 'accept fifty or one hundred rupees from the accused, and this sum had to be paid to him in his office in the presence of his clerks, his subordinate police, and as many witnesses as were obtainable.'<sup>53</sup>

In the first instance, the example of Hidayat Ali can be viewed as a survival strategy or as a means to supplement a meagre income, rather than as a strictly

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<sup>52</sup> Edmund Cox, *Police and Crime in India*, p. 199

<sup>53</sup> Ibid.

deviant process. Secondly, what is noticeable about this particular case is the fact that the transaction does not take place secretly. It is very much a public affair, emphasising the authority and influence of the officer and the *thana* he occupies. If one adopts the view put forward by David Bayley, then the transaction, rather than a bribe, was ‘very much a social practice in which the giving of gratuities to government officers is an indispensable courtesy and civilised way of carrying on business.’<sup>54</sup> Thus, the transaction is one that is beneficial for both parties. For the policeman, it gives his official post a level of importance and influence that the official police system, with its poor pay, poor status and low morale, cannot provide. Cox does not disclose exactly what deviant act the ‘guilty person’ is supposed to have committed, but the fact that the ‘bribe’ is exchanged in the presence of an audience, suggests that perhaps those present do not consider him, or his act, as ‘deviant’.

The occurrence of this informal practice within a formal setting, and that too in the presence of a wider audience, also gains credibility if one accepts the argument put forward by anthropologist Akhil Gupta. Gupta has argued that bribery is not simply an economic transaction but a ‘cultural practice requiring a great deal of performative competence.’<sup>55</sup> Accusations of corruption, he continues, are not simply a response to exclusion from costly governmental services. Rather, such accusations are made because individuals ‘lack the cultural capital required to negotiate deftly for those services.’<sup>56</sup>

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<sup>54</sup> David H. Bayley, ‘The Effects of Corruption on A Developing Nation’ in *Political Research Quarterly*, volume 19, number 4, (December 1966), pp. 721

<sup>55</sup> Akhil Gupta, ‘Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State’ in Aradhana Sharma and Akhil Gupta (eds.). *The Anthropology of the State: A Reader* (Oxford: Blackwell Publishing Ltd), p. 217

<sup>56</sup> Ibid.



Hidayat Ali also had to, in a sense, perform once he was discovered by the authorities. Upon being exposed, Ali went on to use the public nature of this exchange as a form of defence in court. ‘How could it be believed possible’, he argued, ‘that an officer would take bribes openly?...an eater of bribes would take every precaution for secrecy!’<sup>57</sup> The argument was accepted by the court and Ali was acquitted. That Ali was able to use the state definition of bribery to escape prosecution demonstrates the various ways in which subordinates employed the rules of the system and adapted them in ways that enhanced their own authority. But an officer also had to be careful not to ask for too much or he faced the wrath of subordinates who could refer to the laws and regulations to their own advantage and accuse him of misconduct. The much publicised case of Inspector Babu Sital Prasad, dismissed from his post in the Hazaribagh district in Bengal, provides an interesting account of how the police functioned at the *thana* level. His subordinates were required to provide him with a customary fee, or *rasad*, and provide him with various articles of consumption from their own pay. Inspector Prasad was also accused of taking monthly sums from stations within his vicinity. Those subordinates who refused to engage in this process were either dismissed, transferred or subjected to what was known as the ‘black mark system’.<sup>58</sup> This was a system authorised by a senior official, Deputy Superintendent Bamber, to act as a check on the behaviour of officers within the force.<sup>59</sup>

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<sup>57</sup> Edmund Cox., *Police & Crime in India*, p. 199

<sup>58</sup> Any shortcomings were entered in this register in the form of remarks such as ‘Suspicious’, or ‘Careless’. When an officer entered the register four times, he would be awarded one black mark.

<sup>59</sup> In one extraordinary case, noted the Deputy Inspector General investigating the case, one head constable, Seakat Hossein, was awarded 26 marks in one day. See R.F. Guise, Deputy Inspector General of Police, report dated 30 October 1906, in ‘Memorial from Sital Prasad’ in L/PJ/6/902, File 4111

What follows in the case against Sital Prasad is a description of bribery, corruption and illegal gratification which was regarded as a common feature within the subordinate ranks. The viceroy may have argued that these methods were only part of the subordinate ranks of the force, but in this case the behaviour of Prasad and his subordinates was also influenced by his own superior, District Superintendent Bamber. It was discovered that officers were overworked to save him time. The deputy inspector general found that instead of having the special diaries read out to him, they were all 'translated word for word by the head mohurrir...the District Superintendent's excuse for this, was that his time was more valuable than the head mohurrir's.'<sup>60</sup>

What is clear in the case of Sital Prasad is that the District Superintendent, a member of the superior rank, permitted the practice to continue. This is an important point as it sheds light on why coercive methods were central to police investigation and the role of the colonial administration within this process. Low education, the 'Oriental' nature of the police, and indeed the community he served, were amongst the reasons given to explain why many cases upon being sent to trial, collapsed. It was discovered that the police, who were not to have any part in confessions, used force to extort false confessions. This resulted in a high number of acquittals, with the percentage of convictions remaining low. Corruption, the viceroy had argued, existed only in the subordinate ranks because it was a 'practice innate to the people of India.'<sup>61</sup>

The practice of corruption may have been attributed to the nature of the Indian people but what could not be denied was that superior authorities themselves

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<sup>60</sup> Ibid.

<sup>61</sup> 'Letter from the Viceroy of India to the Under Secretary of State of India' dated July 26 1911 in L/PJ/6/1186, File 3218

placed pressure on their subordinates to reach a conviction. In the year 1900, the inspector general stated that although the main duties of the force included the protection of property and prevention of theft, the reality was that ‘it was by the success in the detection of crime that their work was primarily judged.’<sup>62</sup> This view was also expressed in the Police Commission Report of 1902 in which it was noted that the promotion of officers was dependent upon the number of cases which successfully ended in conviction. Thus, the colonial authorities would vilify the ‘illegal’ practices employed by the police to try to gain a conviction. Yet at the same time the police was still placed under pressure to try to maintain a high ratio of convictions and low ratio of crime – pressure which would ultimately lead to the use of coercive methods.

The pressure to meet the demands of the superior authorities is best illustrated in the discovery of a secret circular introduced in the district of Backergunge. Indeed, the existence of the circular raised much concern amongst official circles and the issue reached the debating hall of the House of Commons. In 1893, the District Superintendent of Police for Barisal threatened, by circular, his subordinates with loss of promotion and even their posts if they failed to secure a seventy five percent conviction rate in cases sent up by them for trial.<sup>63</sup> In an article entitled ‘*No Conviction, No Promotion*’, published by the *Amrita Patrika Bazar*, the editor argued that the ‘government is lying if it says it knew nothing!...the District Superintendent of Police takes orders from the higher executive authorities.’<sup>64</sup> Furthermore, it was claimed that the District Magistrate of Backergunge had ordered all subordinate

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<sup>62</sup> *Police Administration Report for the Lower Provinces of Bengal for the Year 1900*

<sup>63</sup> ‘House of Commons Question on Police Corruption’ in file L/PJ/6/351, File 1310. See also

‘Empress versus Asaruddi & 40 others’ in *Calcutta Series*

<sup>64</sup> *Ibid.*

magistrates to call for a fresh batch of witnesses from the police, if the ‘evidence of the witnesses already sent up would not make out a case.’<sup>65</sup> The government may have pointed to the corrupt nature of the subordinate officer, yet, concluded the editor of the article, ‘what can the poor fellows do with this circular of a Damocles sword passing over their heads?...it can only lead to the fabrication of false evidence and the torturing of witnesses by the police to procure this evidence.’<sup>66</sup> Thus, the particular methods employed by the force, although publicly condemned were also a product of the demands of the colonial state. These ‘native’ methods were tolerated as long as they served the objectives of the state.

The complicity of the colonial authorities in allowing informal methods to be employed was again demonstrated in 1911. In that year, frequent correspondence took place between the Viceroy of India, Charles Hardinge and the Under Secretary of State, Edwin Montagu. The subject of the correspondence was the treatment of under trial prisoners by the police and the punishment officers should receive for their conduct in cases of gross torture. In particular, discussions centred around the proposed amendment of the Indian Penal Code. The purpose of the amendment was to try to curb the occurrence of cases in which the excessive conduct of the policeman resulted in the death of the accused. Under the Penal Code as it stood, guilty knowledge and intention to harm were essential elements in the definition of murder. Suggestions involving the modification of this definition were put forward so as to ‘create a new offence to apply exclusively to policemen resorting to torture,

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

which would result in a conviction for murder irrespective of the knowledge or intention.<sup>67</sup>

The viceroy was not convinced by the proposed measure, arguing that ‘torture by the police is seldom inflicted with the intention or knowledge that it will result in murder...the object is to make the prisoner confess, not kill him.’<sup>68</sup> Under Secretary Edwin Montagu asserted that the death penalty should be inflicted upon policemen implicated in cases of torture which resulted in death. However, he agreed with the viceroy that the strict application of the proposed modification was problematic. Montagu argued that death was never intentional, stating that in the majority of cases in which the police tried to secure confessions improperly injury caused was ‘only of a slight nature – a shove, a slap, a cut with a cane, or a cuff.’<sup>69</sup>

The debate concerning whether more stringent measures should be employed to curb the abuses of the police was important in two respects. On the one hand, there was recognition that informal networks and methods were the foundation of the official network of control. The system of criminal administration could not operate without the information which these informal methods supplied – a point that was highlighted during the contentious debates over whether to include the *chowkidar* within the official network of control.<sup>70</sup> At the same time, one also senses an unease as both officials tried to justify the continuation of an illegal act – that of torture – within the colonial legal framework of control.

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<sup>67</sup> ‘Memorandum of An Extract of Mr Montagu’s Letter to His Excellency The Viceroy, Dated 6 April, 1911’ in Treatment of Undertrial Prisoners and the Conduct of Police Lockups L/PJ/6/1186, File 3218

<sup>68</sup> ‘Letter from Viceroy Charles Hardinge to Under Secretary Edwin Montagu, dated 26 July 1911’ in L/PJ/6/1186, File 3218

<sup>69</sup> ‘Home Department Police Branch-Memorandum of an Extract of Mr Montagu’s Letter to his Excellency the Viceroy, dated 6 April, 1911’ in L/PJ/6/1186, File 3218

<sup>70</sup> This was discussed in Chapter three

The authorities used both rhetorical and practical arguments to justify the decision not to apply the proposed measures. Thus, Montagu argued that the statistical reports demonstrated that torture was a ‘rare exception.’<sup>71</sup> He combined this practical reason with a rhetorical justification, stating that it was against the principles of British justice to convict a policeman without proof of intent. The Secretary of State for India, John Morley, added yet another layer to the process of justification, emphasising the stereotype of the Orient. He implied that the principles of justice were inapplicable in the colony, arguing that, ‘if people here use cheap unbridled language against the shameless qualities of the Indian police, they forget that after all, the police are recruited from the Indian people... if they are hopeless rascals, those from whom they come are likely to be a pin better.’<sup>72</sup> The justifications may have differed, from Montagu’s cautious wording to Morley’s more explicit criticism of the local population, but there was an awareness of the limitations faced by the policeman, who had to distort the formal network of control in order to meet the requirements of both state and locality.

The attempts of the subordinate force to try to meet the demands of the state and increase the percentage of convictions emphasised the necessity of compromise between two different systems. How to work within a public office which was limited in many respects, and adapt it to the needs of a native population accustomed to a ‘quick and ready form of justice’ was an issue that the ordinary policeman had to address. The ways in which both police and population adapted the system according to their needs, will be considered in the following paragraphs, which examine the

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<sup>71</sup> ‘Edwin Montagu, Under Secretary for India, to Correspondent on 22 September 1911’ in L/PJ/6/1186, File 3218. He stated that the annual number of convictions for torture since 1905 was only nine

<sup>72</sup> ‘Letter from Mr. Morley to Mr. Minto on the difficulties of the police dated 23 July 1909’ in L/PJ/6/1186, File 3218, p. 158

ways in which the police had to adapt official procedure to the conditions of the locality.

The policeman needed to adapt the requirements of the official network to a native environment in which indirect enquiries were a necessary stage before the truth could be established. The colonial state may have set in place a formal system in which circumstantial evidence was a key aspect and the fate of the accused was going to be decided in the British court, but the real facts of the case could be discovered with surprising ease when the officer worked outside this system and instead employed methods of informal investigation. Indeed, a common theme running through the memoirs of retired police officials is the prevalence of unofficial methods of policing employed when solving any particular case.<sup>73</sup>

In a community in which the culprit was already known, the British system of justice, with its emphasis upon circumstantial evidence, and with the time, distance and inconvenience it involved, was one that did not serve local purposes. But this native procedure was in direct opposition to the regulations set by the British administration which emphasised that confessions were only to be made in the presence of a magistrate. The clash between the colonial system and local networks resulted in recognition amongst officials that the system had to be compromised. Indeed, compromise was necessary, with officials pointing out that the law protected the criminal rather than aiding the police in their investigations.<sup>74</sup>

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<sup>73</sup> See for example T.C., Arthur, *Reminiscences of an Indian Official* (1894), Philip Edmund Stanley Finney, *Just My Luck: Memoirs of a Police Official of the Raj*, republished edition (Dhaka: The University Press, 2000) and Edmund C Cox, *Crime and Police in India* (London: S Paul & Co, 1911)

<sup>74</sup> The Criminal Code of Procedure required all officers to pass on suspects to the nearest magistrate within twenty four hours. Yet in practice it would take the native officer several days to make inquiries and find out the facts of the case. The conflict was clearly exposed in the case of Chandra Kanta Dam, the Sub Inspector belonging to the Chittagong Division who was suspended for having held a suspect in custody for five days. See Bengal Proceedings, October 1894. Nor were, in instances regarding statements given to the police, witnesses liable to be prosecuted for giving false evidence-

There was an implicit understanding that cases could not be solved if the official system of law and order was strictly applied. In one particular case, police official Samuel Thomas Hollins, upon being dissatisfied that the law was not being complied with, complained to his superior, only to be told that ‘Indian officers use methods we cannot use ourselves...crime must be checked by some method other than we have been able to devise.’<sup>75</sup> To offer another example, the freedom with which Bengal police official Charles Elphinstone Gouldsbury provided his native informer Kali Dass in getting to the ‘real facts’ of the case was central to the success of their ‘collaboration.’<sup>76</sup>

In an interesting analysis, one official, Arthur Jules Dash, argued that violence, or even siding with influential cliques within the village, was not the only image that should be associated with the native officer. The average police sub inspector, he argued, was always ‘careful to avoid causing unnecessary trouble, using pressure or torture to elicit information when necessary. Provided that the anonymity of the informant was secure and that nobody “got into trouble that had not been foreseen”, the real facts could be disclosed fairly easily.’<sup>77</sup> Dash was keen to point out that whilst the police officer could express openly oppressive behaviour towards the community, he was also aware that a balance had to be maintained. He was operating in an environment in which he had to employ his resources carefully. He may have been an employee of the state, but he was also conscious that he needed to

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the reason being that they were hurriedly taken down by a barely literate officer. See *Indian Police Commission of 1902: Bengal Papers: volume I*

<sup>75</sup> Samuel Thomas Hollins, *No Ten Commandments: Life in the Indian Police*, (London: Hutchison, 1954), p. 2

<sup>76</sup> Indeed, the decision to employ an informer received the full support of the district superintendent, who assured Gouldsbury that on his part he would see that ‘police were not officious in their enquiries regarding fakirs, or birdcatchers – forms that Kali Dass, the informant, would take’. See Charles Elphinstone Gouldsbury, *Life In The Indian Police* (London: Chapman & Hall, 1912), p. 44

<sup>77</sup> Arthur Jules Dash, ‘Rural Public Opinion a Close Up’ in MSS Eur C188/9 (1972)



operate local networks in a way that would maintain the moral economy of the locality and ensure his own survival within this environment. This was an environment in which disputes were often resolved locally. It was a community, which in many instances, disliked the interference and expense associated with the legal institutions of the state.<sup>78</sup> And, when members of the locality wanted the police to get involved, they required the police to give out justice that was acceptable to them, a form that was directly at odds with that of the colonial rulers.<sup>79</sup>

In the system of criminal administration set up by the colonial government, the object of a criminal enquiry was not to ensure a conviction but to find out whether the accused was innocent or guilty. In this legal system, pointed Inspector General L.F.Morshead, a confession was only the beginning.<sup>80</sup> But the 'real facts' for the policeman were a confession which, for him, signalled the end of a case. The clash between the different methods led to the negative stereotype of the policeman being further highlighted. The investigating officer, it was argued, often had his own theory about the case and would record the evidence in ways that strengthened his case.

But if one considers the point made by Dash, that anonymity of informants was a crucial factor in gaining information, one can understand why the evidence recorded by the investigating officer defied both rules and the authority of the

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<sup>78</sup> To act strictly in accordance with the official system would only result in failure. In 1863, for example, the Inspector General C.F. Carnac recalled a particular dacoity which took place in the district of Purneah. The house of an 'Old Raneer' was attacked and plundered of Rs. 33, 000. Yet, upon a portion of it being discovered by the police, the Raneer refused to recognise it as 'the attack was supposed to have originated in a family feud which was afterwards made up ...the police were not backed up in their efforts by the plaintiff'. See *Police Administration Report for the Year 1863*

<sup>79</sup> In Beerbhoom, a head constable and constable were convicted of ill-treating a person suspected of having stolen certain property. Along with the officers, the owner of the stolen property was arrested as the ill treatment had taken place in his house, 'no doubt at his insistence'. See *Police Administration Report for the Lower Provinces for the Year 1889*

<sup>80</sup> L.F. Morshead, *Police Administration Report for the Lower Provinces for the Year 1910*, p. 2 of Resolution

magistrate as well as deprived the courts of the 'true facts of the case.'<sup>81</sup> The facts were already known within the local environment. The problem was that the investigating officer had to respect the anonymity of the informant, which clashed with an elaborate official system requiring informants to forego any anonymity. Colonial authorities argued that first information reports were often written in the concluding stages of the investigation so as to harmonise with the theory held by the officer. But if one considers the observations of Dash, then it can be suggested that the first information reports were written in a way that harmonised relations within the village community. It protected the anonymity sought by informers and prevented them from entering the confines of a cumbersome colonial justice system.

Furthermore, accusations levelled at the police relating to the low level of convictions and high number of acquittals can be better understood if one considers the argument put forward by one magistrate. Appealing against his suspension, Surya Kumar Agasti had argued that the large number of acquittals in his district were due to the fact that for 'purposes of justice, an acquittal or compromise is really a conviction. The complainant certainly gains his point substantially at any rate...and receives some form of compensation.'<sup>82</sup> Thus, what was often regarded as acquittal resulting from the flaws in police methods and investigation was often the product of compromise between disputing parties.

The inapplicability of full legal procedure within a native environment had a direct impact upon the way in which the police operated within the locality. In instances where cooperation was less than forthcoming, the sub inspector could

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<sup>81</sup> *Police (Beames) Committee Report* (1891), p. 83

<sup>82</sup> 'Degradation of Mr Agasti to the Grade of Joint Magistrate' in Bengal Proceedings, Judicial Department, April 1903

employ methods which did not necessarily involve physical coercion. According to one account, prolonging investigation, in cases where members of the village community had to provide the officer with food and shelter, was one way to extract information. Officials would often label this process as oppressive, an example of the policeman taking advantage of his authority, but the policeman viewed the situation differently. Knowing that villagers would not easily disclose information, he would 'outstay his welcome, knowing that they would tire of the entertainment and start to provide him with useful information.'<sup>83</sup> He was aware that villagers could not easily refuse to accommodate him because according to long-standing usage and custom members of the community were expected to accommodate and provide 'any other article that the visiting officer may require.'<sup>84</sup>

Another method involved appealing to the moral sensibilities of the village community by raising the issue of caste. The issue of faith was believed to be a powerful tool. In 1911, for instance, the Viceroy of India offered his thoughts on a particular case in Birbhum, in which the accused was a sub inspector. He was eventually acquitted by Indian assessors. The viceroy argued the 'acquittal of the Sub-Inspector, of whose guilt there was very little doubt, is the fact that he is a high caste Brahmin.'<sup>85</sup> In another revealing case, a Coolin Brahmin, threatened to 'strip himself of his clothing and neither eat nor drink nor clothe himself again until the accused handed himself over to the police...the Sub-Inspector knowing full well that, the village being composed entirely of Hindus, they would bring pressure to bear

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<sup>83</sup> Cecil Walsh, *Indian Village Crimes* (London: Benn, 1929), p. 91

<sup>84</sup> *Police (Beames) Committee Report* (1891), p. 43

<sup>85</sup> The Advocate General of Bengal was consulted as to whether there were grounds for appeal against the acquittal and he gave opinion that there was none See letter from Charles Hardinge to Edwin Montagu, dated July 26, 1911. L/PJ/6/1186, File 3218

rather than see a Brahmin suffer such discomfort.<sup>86</sup> Upon being reprimanded by his superior, the sub inspector replied ‘but Sahib, I was only doing my duty!’<sup>87</sup> The rather indignant response of the sub inspector highlights the difficulty faced by the native inspector in trying to fulfil his official obligations within a native setting. Working strictly in accordance with procedure was likely to cause much annoyance amongst the locality which in turn risked his ability to gain useful information.

Strict adherence to official procedure, then, placed a number of restrictions in the way of the officer. Debkamal Ganguly has examined in particular a series of detective stories by colonial detective Priyonath Mukhopadhyay.<sup>88</sup> Ganguly has examined the ways in which Mukhopadhyay, by transforming real-life events into fiction, highlighted some of the difficulties the ordinary policeman faced when adhering to the official system. In one case, known as *The Fake Coins*, the culprit was known to the policeman who took shelter in a neighbouring household to watch the culprit engaging in criminal activity. Both were aware of the other’s presence, with the culprit making no attempt to hide his actions. It is only when he tried to catch him red-handed by involving his superiors in the operation that the officer failed to succeed in his objective. Knowing that the officer needed to have his eye-witness account corroborated by his superiors or constables, the culprit was easily able to evade detection.

The policeman could employ physical coercion and accentuate the negative stereotype with which he was associated. But to do so was to make himself

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<sup>86</sup> Charles Elphinstone Gouldsbury, *Life In the Indian Police*, p. 225

<sup>87</sup> Ibid.

<sup>88</sup> Known as the *Darogar Daptar*, the stories were published as part of a monthly series in 206 monthly issues, between 1890 and 1902, and have been examined in their entirety by Debkamal Ganguly. See Debkamal Ganguly, ‘The Culture of Crime Pulp Fiction in Bengal’ at [www.sarai.net](http://www.sarai.net), pp.1-25

vulnerable to attack from the local community. Despite being cloaked in official authority, he had to contend with other authorities at the village level, such as the *panchayat* and the *chowkidar*. The officer was aware that cooperation was vital not only for gaining access to the real facts but also because he could himself be victim of various plots at the village level. In 1889, for instance, a charge against a sub inspector in Bogra turned out, on enquiry, to be the result of having offended the people concerned in an investigation by speaking roughly to their women.<sup>89</sup> Indeed, Akhil Gupta has argued that the discourse of corruption can act as a powerful tool by which local communities can vent their frustrations against a distant state whom they may feel is neglecting their needs. By attacking the institutions of the state in this way, local communities, continues Gupta, although lacking material resources, can still strike a blow through such accusations.<sup>90</sup>

In the colonial context, allegations of corruption took various forms. In the district of Dinajpur in 1902, it was found that witnesses and complainants refused to make a statement to the police if their local Dewania was absent. In one particular case, in which a sub inspector slapped a 'Hari' woman for creating a disturbance, the 'Dewania got hold of her to falsely charge the Sub-Inspector with having raped her granddaughter.'<sup>91</sup> It was later discovered that the sub inspector had offended the Dewania in an earlier incident.<sup>92</sup> In 1885, a pleader, in the district of Dacca, whose house had been searched by the police, put in a false charge of torture against them.<sup>93</sup>

In some instances, the extreme lengths to which some individuals could go to when

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<sup>89</sup> See *Police Administration Report for the Lower Provinces for the Year 1889*

<sup>90</sup> See Akhil Gupta, 'Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State' pp. 375-402

<sup>91</sup> 'The Dewania System in the District of Dinajpur', dated 30 November 1902, see Ibid.

<sup>92</sup> Indeed, there would often be a 'clash of authorities' between the police and the 'Chief Dewanias'. The District Superintendent noted that of the '555 men who were recognised as Dewanias, 232 had directly opposed the police in the investigation of from 1 to 4 specific cases each'. See Ibid.

<sup>93</sup> See *Police Administration Report for the Lower Provinces for the Year 1885*

making accusations against the police, was a cause for concern.<sup>94</sup> In a murder case which arose in 1894, the widow of the victim stated that the sub inspector remained in her house for six days during the investigation. She argued that he ‘simply sat in her *baitkkhana* and wrote squares of paper rather than go out and search.’<sup>95</sup> The sub inspector was immediately suspended. The problem continued to persist over the years. In 1911, 115 charges had been recorded against the police, not a significant number according to the inspector general, yet still demonstrating that if ‘police officers sin it is evident that they are sinned against and must run the full gauntlet of accusation.’<sup>96</sup>

The official network of policing proved flexible enough for various groups to meet their own specific requirements. For the policeman, the network allowed him to work outside the system established by the state using informal methods of enquiry which would provide information that was not so forthcoming when the officer worked according to official procedure. It was one in which he had to make careful use of his resources, applying coercion when necessary. Failure to maintain a level of cooperation within the local community could make the all-powerful policeman vulnerable to accusations of misconduct. This could all too easily be made by a village community capable of using the unpopularity of the policeman amongst official circles to their own advantage. Above all, the broader practicalities of empire allowed this state of affairs to continue, one in which the need for sufficient evidence

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<sup>94</sup> Viceroy Hardinge in his letter to the Under Secretary Montagu described a case in which one woman was voluntarily branded with hot irons on both thighs by two men engaged in a burglary – the idea being to draw off attention from the burglary to a false charge of torture by the police who had earlier questioned her. See ‘Letter from the Viceroy to the Under Secretary, dated 23 March 1911 (private) in L/PJ/6/1186, File 3218

<sup>95</sup> Eliza Orme, *Trial of Shama Charan Pal (for murder): An Illustration of Village Life in Bengal With an Introduction by Miss Orme, LLB (and a note by the defendant’s counsel Manomohana Ghosa Howrah Sessions, November, 1894* (London: Lawrence & Bullen, 1897), p. 85

<sup>96</sup> See *Police Administration Report for the Lower Provinces for the Year 1911*

went hand in hand with the low conviction rate. It was a situation which the authorities could acknowledge in less difficult times, content to blame the Oriental nature of the native character and the subsequent lack of moral progress for the shortcomings of the system of criminal law. But it was the politically tumultuous decade at the turn of the twentieth century, during which crime and revolutionary politics were closely linked, that exposed the fragility of the ordinary system of law. The need to establish evidence and convict politically threatening groups was necessary to uphold British authority. The ways in which the ordinary legal framework undermined the role of the police in trying to contain this political threat, and how the revolutionary movement took advantage of such shortcomings, is discussed in the following section.

#### **4.4 *Swadeshi*, Revolution and the Ordinary Methods of Law**

In October 1905, the province of Bengal was partitioned following the proposals made two years previously by Viceroy Curzon. He had argued that splitting the region would make a large and unwieldy area easier for the authorities to control. The division would also make it difficult for nationalist opinion to pass back and forth between the cities of Calcutta and Dacca. The backlash had begun as soon as the proposals were made public. Resentment over the fact that public opinion regarding the proposals had not been sought, as well as a belief that the Bengali race would be divided, led to protests forming as early as January 1904. By July 1905, the *Swadeshi* movement began in earnest, with the declaration of boycotting imported, in particular English, goods. The agitation, as the Inspector General of Police of the Lower Provinces of Bengal C.J. Stevenson Moore noted in 1906, was essentially

confined to a small, educated and influential section of the community. Attempts were made to give the movement a mass character which would extend beyond the cities to include the rural population, through an appeal to religious sentiments as well as an emphasis on the economic benefits which the boycott would produce.<sup>97</sup> For all its intentions to transform into a mass movement, however, the *Swadeshi* agitation was decidedly limited in its impact, never extending beyond a discontented Hindu middle class in select areas.<sup>98</sup> The poorer classes, it was noted, continued to use and sell foreign goods, dismissing the movement as nothing more than ‘Babu Tamasha.’<sup>99</sup>

The failure of the movement to expand into a mass agitation against the partition was attributed by Inspector General Stevenson Moore to the hidden political agenda underlying the movement. The movement, concluded Stevenson Moore, was ultimately a political weapon, any promise of economic or social reform serving as a smokescreen to the real agenda of the agitators. It was this ulterior motive which would cause the colonial government concern. Indeed, the *Swadeshi* movement did produce far-reaching political developments by providing a public platform for more extreme versions of nationalism. The partition had created a divide between the moderates and extremists within the Indian National Congress, which ultimately resulted in a split in December 1907. The Congress aimed for a system of

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<sup>97</sup> Attempts to appeal to the masses included employing both the *zamindari* agency, who influenced the views of their tenants, and secondly young students, who applied pressure on purchasers to buy only Swadeshi goods. Vows were also reportedly taken by Hindu priests in temples to end the use of foreign goods revive stagnated indigenous industries. It was also reported that Brahmans took a lead part in the agitation by threatening indifferent persons with social excommunication. See ‘First Fortnightly Report on Agitation & Swadeshi from C.W. Carlyle to the Secretary to the Government of India’, dated 29 August 1906, in L/PJ/6/781, File 3462

<sup>98</sup> The movement was confined to the Calcutta and Presidency and Burdwan Divisions of the province.

<sup>99</sup> See ‘Report by the Director of Criminal Intelligence Regarding the Anti Partition Agitation in Bengal and Eastern Bengal and Assam’ in L/PJ/6/790, File 4206, which provides various examples of the many ways in which the ‘common people’ could evade the restrictions imposed by the movement.



government which was similar to that adopted by other self-governing members of the empire and went on to support the method of boycott as promoted by the *Swadeshi* movement. The revolutionaries, on the other hand, placed more emphasis upon more extreme acts including terrorism, political assassination and dacoity to finance the cause. These methods were no sporadic attempts to attack the authorities but were the product of a vast, well-organised system which had been developing since the turn of the century – the objective being to end British rule in India.<sup>100</sup> International events, such as the victory of Japan over Russia also spurred on revolutionary activity, serving as evidence that Western rule was not invincible whilst the war led to the revolutionary network extending as far as America and Germany.

Alongside the intense seditious activity,<sup>101</sup> as well as there being no fewer than eleven political dacoities in 1911, the colonial government would also experience a rise in crimes unrelated to revolutionary activity. In the new province of Eastern Bengal and Assam the number of riot cases had increased from 425 to 2096 between 1905 and 1907 whilst in 1909, Inspector General Knyvett reported his department lacked the necessary manpower to handle ordinary and everyday crime which had soared during that year.

The troubled political environment ensured that the police played an increasingly repressive role in handling the agitation and a series of repressive measures were introduced. Ordinance No. 1 of 1907 regulated public meetings by

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<sup>100</sup> Physical training of youths was a central aspect of the movement. In 1901, Jotin Banerji, one of the leading anarchists, set up a school in Calcutta in which he combined teaching of physical culture and politics whilst in 1903 Sarala Devi Ghosh, a graduate of Calcutta University, opened an academy at Ballygunge, Calcutta, where Bengali youths were instructed in fencing and jiu-jitsu. Also, throughout the Province, akharas (gymnasias) were introduced in which wrestling and *lathi* practice took place.

<sup>101</sup> The *Yugantar* and *Bande Mataram* were two influential newspapers to be published in 1906. At the same time, seditious pamphlets ‘Who is our King? And ‘Golden Bengal’ were distributed amongst the student population.

stating that ‘a notice had to be given to the police if a meeting was to be held and the police were to attend in large forces and take notes of the proceeding.’<sup>102</sup> In 1908, three significant acts were passed – the Explosives Substances Act (VI of 1908), dealing with terrorist crimes, the Newspapers (Incitement to Offences) Act (VII of 1908) and the Indian Criminal Law Amendment Act (XIV of 1908), which provided for the ‘more speedy trial of anarchical offences.’<sup>103</sup> Circulars were produced, instructing universities and colleges to prevent students from engaging in any form of political protest, with teachers and heads to act as ‘special constables’.<sup>104</sup>

The *Amrita Bazar Patrika*, raised fears about the ‘secret doings of the police’, referring to the sudden visit by the district superintendent to the home of a well-known pleader. ‘If a respected pleader could be interrogated at 1am’, as was argued in the paper, ‘then what can the common man expect?!’<sup>105</sup> Thus, the movement ensured that grievances were publicly aired, resulting in ‘peaceful pickets being beaten and sent to jail, meetings being broken up by lathi charges by the police and popular outbreaks and riots, particularly in the Hooghly and Muzzafarpur districts, suppressed with extreme severity.’<sup>106</sup>

The repressive role of the police was further aided by key legislation. Regulation III of 1818 allowed the deportation of criminals whilst the Defence of India Act of 1915 gave ‘wide powers of censorship, search and arrest to the police and empowered the tribunals, which tried the cases to pass sentences of special detention...by 1917 most of the main leaders were under detention and main

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<sup>102</sup> Ibid, p. 259

<sup>103</sup> Ibid, p. 277

<sup>104</sup> See ‘The Partition of Bengal: Three Extraordinary Circulars’ in L/PJ/6/767, File 1938

<sup>105</sup> *Amrita Bazaar Patrika* 9 June 1909 Home Department Branch: August 1909, numbers. 21-2, IOR.POS.8962, Home Department, Political

<sup>106</sup> A. Gupta, *The Police in British India 1861-1947*, p. 258

conspiracies under control.’<sup>107</sup> For members of the legislative council, who opposed legislation increasing the powers of the police, the provisions made the police, who were the ‘eye and ear of the government, absolute masters of the people...the people will be handed over to the tender mercies of a body of public servants who are not the most efficient or immaculate.’<sup>108</sup>

The police may have had a significant part to play in suppressing agitation but the circumstances in which they were forced to operate suggest that police control over the people was not absolute. They faced a number of obstacles which made them vulnerable to attack both from the agitators and the government that they were to serve. One problem was the lack of police numbers. Alongside the defective telegraphic communication which ensured difficulties and delays in tracking the movements of suspects, there was the problem of police manpower required to contain political as well as ordinary crime. C.J. Stevenson Moore in his report for the year 1905 stated that additional police had to be appointed in a number of cases. The strength of the armed police was increased and kept up to its full strength and in an efficient state so that men could be moved immediately if required. Inspector General Knyvett in 1909 reported that political crime had increased to such an extent that the services of the military police companies at Hooghly, Ranchi and Bhagalpur had been utilised on twelve occasions, to the equivalent of half a company for four months, chiefly in the districts around Calcutta and in connection with political trouble.<sup>109</sup> In 1912, it was reported that the authorities were prepared to grant wealthy

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<sup>107</sup> Ibid, p. 129

<sup>108</sup> Objection raised by Council member Rasbehary Ghose, ‘Documents Relating to the Prevention of Seditious Meetings Act – Act VI of 1907’ in L/PJ/6/836, File 4060

<sup>109</sup> Upon 127 occasions, 646 men and officers, equal to the whole of an average district force, had to be employed either at headquarters or in these districts, for the equivalent of one and a half months over and above their sanctioned establishments to meet such special requirements.

merchants a licence which would permit them to employ their own sepoys in an attempt to prevent dacoity.<sup>110</sup>

The shortage of police staff required to maintain order was made more acute by the attacks on members of the police force. The police, as the most visible representatives of foreign rule, were the agency subjected to violent attack by the political agitators. Targeting the agencies of law and order was considered an integral part of the plan to disable the colonial administration. Thus, by 1906, the manufacturing of explosives and the use of bombs and firearms was underway, leading to a series of high-profile political murders such as that of Sir William Curzon Wylie, Political Assistant Deputy Commissioner at the India office in July 1909 and the attempted assassinations of District Judge Mr Kingsford in 1908, Sir Andrew Fraser, the Lieutenant Governor of Bengal in 1907 and even the viceroy of India in 1910.<sup>111</sup> Such instances strained the relationship between police, both regular and detective, and the public. Whilst students of the *swadeshi* movement hurled abuse and even attacked the police, the terrorist movement also pursued a campaign of terror against the police. It led to the often brutal murders of influential policemen as well as a number of magistrates trying important cases. Others were seriously wounded. Even Charles Augustus Tegart, one of the most influential officers who served in the Intelligence Branch, was a major target of the movement and there were a number of failed attempts on his life.<sup>112</sup> Between 1907 and 1917, twenty police officers, most of them Indian, were assassinated. The Defence of India Act,

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<sup>110</sup> See *Police Administration Report for the Lower Provinces of Bengal for the Year 1912*

<sup>111</sup> 'Papers of Sir Charles Augustus Tegart' in Mss Eur F161/247 (1901- 46), p. 80

<sup>112</sup> Tegart served as the Deputy Inspector General of the Intelligence Branch and then as the Commissioner of Police, Calcutta. The development of his career was closely entwined with the rise of terrorism in Bengal and he went on to receive the King's Police Medal in 1911. The most serious attempt on the life of Tegart was made in 1924 by Gopi Nath Saha, who went on to plead insanity once captured. See 'Papers of Sir Charles Augustus Tegart (1901- 46)' in Mss Eur F161/247

introduced in 1915, was sparingly applied and did not eliminate the reservations which existed amongst official circles about the suspension of ordinary law. These reservations were put aside in June 1916 with the murder of Deputy Superintendent Basanta Kumar Chatterji, a key figure in the response to the revolutionary campaign. It was with his death that the authorities were convinced that extraordinary measures were necessary to stop the revolutionary movement from realising one of their key aims, which was the demoralisation of the police. To demoralise the police was to disable completely the colonial administration. To prevent this, it was clear, argued Sidney Rowlatt in his report, that the police had to be provided with measures that allowed them to bypass ordinary regulations and 'get inside the movement' to maintain a level of control.

The murder of Deputy Superintendent Chatterji was also significant because it demonstrated that revolutionary crime could not be contained through ordinary channels of law and order. Ordinary channels required overwhelming evidence to convict. Even during less threatening times, when faced with 'ordinary' crime, this evidence was difficult to acquire and the authorities tolerated the inadequacies of the system. The ways in which the native community could adapt the legal system to their own requirements could be dismissed through racial stereotypes. But when faced with revolutionary crime, the aim of which was to end British rule in India, conviction became a necessity. Yet that was difficult to obtain through ordinary channels, which suspects could evade so easily. Because confessions were not admissible as evidence if made in the presence of the police, many suspects openly admitted their complicity in the crime to the police. Facts, as Sidney Rowlatt pointed out, were known by the police because they could not be proved, as was the case

with suspects questioned over the Bhowanipore Murders.<sup>113</sup> This was also acknowledged by Charles Augustus Tegart. He had noted that in spite of the 'secret service system' of approvers and spies which he had established and through which he had discovered major terrorist plots, prosecution was fraught with difficulties.<sup>114</sup> Statements made to his officers were never accepted as evidence nor did witnesses come forward to testify. Information was difficult to obtain, due to the disconnected and complex organisation of revolutionary groups.<sup>115</sup> It was also impossible to use as evidence if not made in the presence of a magistrate. Furthermore, the methods employed by the police in trying to extract information under ordinary procedure were also placed under intense scrutiny. One conspiracy case in 1908, in which a suspect was kept in police custody for seven days before making a confession to the deputy magistrate, was cited as an example of gross police torture. Of those suspects facing trial, acquittal was often the product of lengthy proceedings spanning months as well as a detailed cross-examination of 'every minute point, however unimportant, to a degree unknown in England'.<sup>116</sup> Attempts to contain revolutionary crime through the ordinary system of justice, thus, proved futile. Between 1907 and 1917, the revolutionary party in Bengal was responsible for 210 outrages and 101 attempts to commit such outrages. The police had definite information of the complicity of no fewer than 1038 persons in these offences, but they had only been able to obtain

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<sup>113</sup> Five suspects were arrested and questioned, all of them acknowledging their complicity in the crime, without admitting that they carried out the criminal act. There was enough information for the police to establish that the suspects were members of the revolutionary branch known as Dacca Anusilan Samiti, yet there was still not enough to justify a prosecution.

<sup>114</sup> In particular the Maniktollah Conspiracy Case of 1908, which exposed the private residence of Arabindo Ghose, a leading revolutionary, as a 'bomb factory, a training centre for revolutionaries and school for future manufacturers of bombs'.

<sup>115</sup> When dacoity was planned, three or four men from different centres were collected under one leader. The members of one party did not know those of another, and sometimes not even those of their own party. This way, if one was arrested, he would be unable to give the others away.

<sup>116</sup> Sedition (Rowlatt) Committee, 1918: Secret Edition, p. 138

convictions against eighty-four of them for specific offences, against sixty-three on charges of conspiracy and against fifty-eight in connection with the illegal possession of arms and explosives.

One of the key concerns about political crime was the attempt to disable the colonial administration and political assassination was cited as an effort to demoralise the police. But the lack of success in gaining a conviction demonstrates that the colonial authorities also had a part to play in what Sir Henry Wheeler called, the 'lack of wholeheartedness' of the police. The police may have been at the forefront of repressing the revolutionary movement yet the government they were trying to protect continued to question and attack the force. Tegart himself was dismayed at the 'unmerited' attacks on the police, citing the Mussalmanpara Lane case of 1914 as an example of the police being unfairly discredited. A failed bomb throwing attempt was made by Nagen Sen Gupta, although no one witnessed him committing this act and he claimed to be a passer-by. Once taken into custody, he stated before the High Court judges that the 'bomb had been planted by the police...he was unanimously acquitted and one judge made caustic comments about the police present at the time.'<sup>117</sup> Eleven years later, in 1925, Gupta admitted his part in the case. But despite calls to the Legislative Council to 'clear the police of a longstanding charge against them' members of the Council remained 'unmoved as they had known this all along...they regarded false accusations as a fair means of attack and would continue to use them.'<sup>118</sup> In the period following the assassination of Deputy Superintendent Shamsul Alam, it had been argued by suspects during their trial that it was Alam himself who had manufactured evidence himself during the

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<sup>117</sup> 'Papers of Sir Charles Augustus Tegart', p. 84

<sup>118</sup> Ibid, p. 166

Howrah-Sibpur political dacoity case of 1910, and as a result was 'justly removed.' This line of argument was accepted by the chief justice, who in his judgement pointed to the role of Alam of tutoring the particular approver before sending him to the magistrate to make his statement. Out of the forty-six men sent up to court in the case, only six would be convicted.

Lack of support and faith from their superiors added to the psychological strain of working in an environment in which they faced not only physical attack but also social boycott from their own communities. The Officiating Commissioner of Dacca in his correspondence with the Chief Secretary to the Government of Eastern Bengal and Assam discussed in depth the problem of containing agitation in a new province in which lack of resources, particularly the shortage of police, was a growing concern. In response to criticism of the police in the handling of various rioting cases, the Officiating Commissioner argued that the conditions within which the police worked caused 'injury to the health and nerves of the police and district officers.'<sup>119</sup> In 1912, the Officiating Chief Secretary to the Government of Bengal stated that forty seven percent of men of the armed reserve were admitted to hospital as opposed to forty percent the previous year. Staff shortages and the subsequent mental stress this caused were cited as the reasons behind the removal of the District Magistrate of Mymensingh from his post. The District Magistrate of Backergunge similarly experienced 'a constant stretch of the faculties' and threatened to resign if he was not provided with additional police. Alongside the abuse in the press as well as the false accusations of torture, Hindu officers, who belonged to the same classes as the agitators, faced social boycott which was often difficult for them to withstand.

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<sup>119</sup> 'Proposals to Combat the Seditious Movements in Eastern Bengal & Assam' in Proceedings, Government of India, Home Department, Political A, November 1907, Number. 12



In certain cases, the Commissioner of Dacca argued, it was difficult for some officers to marry off their daughters.

The purpose of revolutionary crime was to end British rule. The response to it demonstrated that once again legal procedure had to be adapted. In times of peace, the police, or the community it was to protect, failed to act in accordance with the law and the government responded to it by tolerating the way in which police really operated in the native context. Revolutionary crime, in line with previous forms of protest threatening colonial rule, required a more direct response. Bypassing legal procedure through special laws was key to preserving order. These laws may have provided the police with power to openly coerce and suppress agitators but they were far from the masters of the people. Instead, they occupied a rather thankless role of protecting a government who would provide it with special powers but would fail to fully trust or support the police, particularly in the matter of conviction. Trying to meet the objectives of the state placed them in direct opposition to the expectations of the native community which resented the presence of additional police in troublesome areas. Physical attack, social boycott and potentially fatal encounters with members of the revolutionary organisation which aimed to paralyse the police force followed the repressive measures introduced by the colonial state. Thus, repressive measures may have placed the police at the forefront of the state response to revolutionary crime but far from being absolute masters of the people, they were often isolated figures caught between the public and the state, neither of which fully supported or trusted the police and continued to use the force as a point of attack.

## 4.5 Conclusion

If he does his duty, as laid in the Police Code he cannot get to the truth of the case and fails as a detective; if he lays himself out to detect the case; he must run the risks and deviate from procedure<sup>120</sup>

This was the response of A.D. Knyvett, the Inspector General of Police for the Lower Provinces of Bengal, to an official who emphasised the corrupt and oppressive nature of the police in the Indian Police Commission Report of 1902. The argument put forward by Knyvett is revealing in that it emphasises the unsuitability of the ordinary procedures of law within the native environment. This was an environment in which those involved in land disputes and family quarrels, issues of a personal nature, were very reluctant to invoke the official machinery of the state. Information was key to the solving of any case and this often required the application of more informal methods to gain access to a local community which, as many officials noted, often already knew who the culprit was. John Beames in his report expressed dismay that common talk and gossip, which provided good evidence pointing to the guilty party, were difficult to establish as legal evidence in the courts established in India by the British.

The policeman was himself serving as officer and judge which undermined the court, yet the nature of colonial rule meant that the ordinary procedures of law always required a level of adjustment at the local level. Financial exigencies, lack of police manpower as well as a lack of official contact with the interior, always determined how the police operated in practice. Indeed, the practicalities of empire always demanded the need for compromise between the two systems. In 1905, a dispute between an uncle and nephew over land was not settled by the regular police.

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<sup>120</sup> 'Note by A.D. Knyvett' in *Indian Police Commission Report: Bengal Papers volume 1* (1905)

Instead, it was deemed that peace could only be preserved by conferring the status of special police officers upon the leaders of the two feuding parties.<sup>121</sup> Charles Elphinstone Gouldsbury would also describe the ‘arbitrary interpretation of the law’ when settling disturbances in the district of Fureedpore. Leaders of each party were appointed as special constables and the nature of their dispute was then examined and referred to court, whereupon the case would be decided to the mutual satisfaction of both parties.<sup>122</sup>

The methods employed by the police of course could involve physical coercion but the popular image of the policeman as oppressive and corrupt, targeting innocent individuals was only one aspect of the tale. This chapter has tried to highlight those individual instances and scenarios where the actions of the police undermined the stereotype with which they were associated. In reality, the local police had to defy official procedure in order to meet the conditions of the locality. This did not necessarily mean that they were rebelling against the official system. Rather, they had to maintain a balance between meeting the needs of both state and the locality. Only by defying procedure and acting outside the network of control, could they gain access to any information. By operating in this way, the local policeman avoided alienating the locality whilst providing the statistics for the crime registers which were so valued by the colonial government. That these statistics were often questionable was of course a concern for the government keenly aware of how fragile the network of information was in the colony. But the availability of this information, at the very least, made colonial rule visible to the local population.

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<sup>121</sup> See ‘Sukhdeo Narain Singh versus Pryag Narain Singh – village Narga, district Gaya, Division of Patna’ in ‘Bengal Police Proceedings, Judicial Department, Year 1905, File 7043

<sup>122</sup> Charles Elphinstone Gouldsbury, *Life In the Indian Police*, p. 280

The popular stereotype of the policeman concealed the many needs of the local community which he had to take into account. In one native memoir, Lal Behari Day recalled a case in which a constable, in agreement with members of the village, did not make an official report upon the discovery of a drowned body because 'according to Hindu custom, cremation would have to take place immediately...official procedure and the time, delay and distance to the Station it would entail would simply not allow this.'<sup>123</sup> The existence of practices which were at odds with the system of justice set in place by the British always elicited a somewhat uneasy response from the colonial rulers.

The ordinary system of law was unsuited to the native environment and led to a state of affairs in which the government often silently tolerated the irregular workings of the police. Issues of pay were a recurring problem which the government was never able to solve. It was cheaper meanwhile for the government to tolerate the bribery, often resorted to by the police in order to supplement their poor wages. To successfully tackle the problems of pay and corruption required financial resources, which the state lacked, and a more rigorous application of official procedure aimed at improving the moral behaviour of the people was not as pressing as the need to preserve order.<sup>124</sup> However, the colonial government could never publicly admit that they tolerated these informal practices.

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<sup>123</sup> Lal Behari Day, *Govinda Samanta Or The History of a Bengal Raiyat* (London: Macmillan & Co., 1874), p. 162

<sup>124</sup> Constable Training Schools were established in 1905 in Nathnagar and Purulia, where they were taught 'drill, gymnastics, rifle exercise, guard and sentry duties, physical drill, bayonet exercise and riot drill and were taught to be clean, to put on their uniform neatly and how to conduct themselves in front of a superior officer'. This clearly illustrated that rather than engage in ordinary police duties, suppress ordinary crime and protect public safety, the police were being further militarised and were used to suppress the public and preserve order. *Report on the Police Administration of the Lower Provinces of Bengal for the Year 1905*, p. 12

The proposal to modify the Indian Penal Code as a means to restrict further the opportunities for improper conduct may have been rejected but its existence demonstrates a clear distrust of the police force. The Viceroy Charles Hardinge, in his correspondence with Under Secretary Edwin Montagu may have tried to downplay the severity of the methods employed by officers in extracting confessions but the occurrence of such cases were a source of anxiety for the colonial authorities as they concerned official agents of the colonial government – the police – operating in ways outside the formal, legal structure introduced by the state. Furthermore, the views of both the viceroy and under secretary suggest a resignation to the ways in which the police chose to operate, particularly since contact with the population would always be limited.<sup>125</sup>

The police, the visible representatives of colonial rule, was part of the official system and every effort had to be made to give the impression that problems regarding pay, corruption, and the deviation of the police from official procedures were being tackled. Thus, various reports over the years, from the Beames Committee of 1891 to the Indian Police Commission of 1902, were all produced with these objectives in mind. None of the reports went on to produce any favourable results. To apply justice strictly in accordance with official codes and procedures only served to highlight the clash between local practices and the Western system of law and order. It also stretched the resources of an empire, for which questions of finance and manpower always ultimately determined how a colony was governed. It was easier to allow the system to be compromised and adapted to the local

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<sup>125</sup> In 1914, noted the Inspector General of Police for the Lower Provinces, ‘only 20000 police officers were entrusted with the duty of protecting the lives and property of more than forty million people living or the most part in scattered hamlets and homesteads spread over an area of 73000 square miles’ See *Police Administration Report for the Lower Provinces of Bengal for the Year 1914*, p. 2 of Resolution

environment, allowing local agencies to respond to the system in ways which ranged from outright rejection to the manipulation of key agencies in order to meet with personal agendas. Thus, the ordinary machinery of law and order was always subject to the requirements of the local environment, even if in the public eye the government constantly emphasised the efforts being made to improve the police force.

The colonial authorities needed to overlook the machinery of law and order particularly when faced with agitations which threatened British rule in India. In times of peace, the authorities could turn a blind eye to the workings of the police in handling crime and criminals. In the politically tumultuous period following the *Swadeshi* movement, there was again the recognition that ordinary legal procedures were unsuited to the broader objectives of the state. Revolutionary crime indeed illustrated that ordinary procedures could place British rule at risk due to the protection it afforded suspects and the difficulties it posed for the police in successfully convicting suspects and suppressing the movement. The vulnerability of the police was a feature which persisted until the end of British rule.<sup>126</sup> It was a vulnerability which resulted in the Defence of India Act in 1915 by which ordinary policing procedures were suspended.

That the ordinary machinery of law and order was unsuited to the politically charged environment of the inter-war years was most publicly demonstrated in 1918. That year, the report of Sidney Rowlett proposed that special laws be permanently

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<sup>126</sup> In 1924, Tegart received an anonymous telegram stating that the 'Bengal Revolutionary Council has passed a resolution of a campaign of ruthless assassination of police officers....anyone assisting the government will be regarded as a traitor.' This telegram was sent not only to Tegart but also to a magistrate who had held a witness in the case against a failed assassin, and a Standing counsel who had prosecuted in the Maniktollah bomb conspiracy. At the height of the non-cooperation movement the number of attacks on policemen and police stations intensified. See Papers of Sir Charles Augustus Tegart' in Mss Eur F161/247

invoked to suspend *habeas corpus* and other core legal procedures.<sup>127</sup> In England, the Rowlatt Act was shrouded in secrecy and in India it was repealed in 1922 following public protests, most notably the catastrophic Jallianwalla Bagh massacre of 1919 and Mahatma Gandhi's non-cooperation movement of 1920-22. The politically fragile situation led to the introduction of the Bengal Criminal Law Amendment Act, despite the bill having being rejected by a majority of nine votes in the provincial legislative assembly. This again demonstrated how the ordinary machinery of law and order, and the functioning of the police within this structure, was always adapted, or even ignored, depending on the circumstances of the moment and the needs of different groups.

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<sup>127</sup> The Rowlatt report, having concluded that the forces of law and order working through the ordinary channels were beaten before war broke out in 1914, led to an act which vested the imperial government with special powers to counter the threats posed by revolutionary crime following the first partition of the Bengal province in 1905. Officially known as the Anarchical and Revolutionary Crimes Act, the Rowlatt Act effectively allowed the government to establish a special tribunal to replace ordinary legal processes. As a result, political activists would be detained without trial, whilst individuals suspected of treason or sedition faced arrest without warrant. *Sedition (Rowlatt) Committee* (1918), p. 196

## Chapter Five: Justice in the British Court

- Laxmi:* Justice, O Lord of generosity! Justice, O Nourisher of the poor! I am dead altogether! I am a widow. Ram Singh came to my house –
- Clerk (unmoved):* Stand up and take the oath
- Laxmi:* What?
- Clerk:* Say what I say – according to my religion, in the presence of the Almighty, whatever I shall say in this case will be the truth and nothing but the truth
- Laxmi:* In the presence of the Almighty (breaks away) Justice, O Lord! I don't understand. I am a widow. Ram Singh came to my shop and –
- Clerk (angry):* Take the oath!
- Laxmi (subdued):* Justice, O Lord...
- Clerk* (repeats oath several times)
- Laxmi:* In accordance with...(breaks away again) Of course I shall tell the truth! Have I come here to tell lies?! Justice oh my Lord, my *mabap* (mother-father)! Ram Singh came to –
- Clerk:* Listen you Laxmi, if you will not take the oath, the Hakim cannot listen to you.<sup>1</sup>

After several more failed attempts, Laxmi Telinee was able to recite the oath and have her case heard. By doing so, she has satisfied magistrate George Graham that she publicly acknowledges the British court as the legitimate arena which will provide the justice that she demands with such great volubility. The ceremony and procedure surrounding this arena is an integral part of the process, as it is not enough for Graham to be referred to as the giver of justice. What he, and the body he represents, wants is official confirmation of this and for it to be visible. Once this is received, Graham can move on to the next, and most important, stage of finding out the truth and resolving the dispute. The eventual outcome, however, only serves to highlight the sharp contrast between visibility and practice. A few days later, just moments before the magistrate writes his judgement on the case, an excited Laxmi bursts into the courtroom once again, this time with the accused, and cries out for a compromise. This, Graham is only too happy to grant because, as he recalls in his

<sup>1</sup> George Graham, *Life in the Mofussil, or, the civilian in Lower Bengal* (London, Kegan Paul, 1878) 1878), pp. 96-97



memoir, 'he simply did not know the truth' despite the lengthy cross-examination and countless witnesses brought forward by both sides. Subsequent experiences, he continues, suggested to him that the accusation of assault was probably false, the theatrical behaviour of Laxmi and the eventual decision of the parties to settle the matter privately, only serving to strengthen his suspicions.<sup>2</sup>

The purpose of this chapter is twofold. Firstly, it aims to examine why, and exactly when, the local population made use of the colonial court and adapted the resources of the court to suit their own requirements. How the constraints and limitations of colonial rule created an environment which made it legally possible for complainants to adapt the court according to need is also considered. Adapting features of the legal system to meet the needs of different groups, as well as the demands of a colony, were not without controversy. The second aim, then, of this chapter is to examine the trial by jury system in India and the tensions and dilemmas of colonial rule which it would bring into sharper focus as a result of its introduction.

As the instrument responsible for providing the laws and rules of the colonial state, the British court was a vital legitimising tool of the colonial government in India. This was the site where the benefits of codification would be most visible, with many officials stressing that the legal codes introduced following the assumption of Crown control were the greatest achievement of the British administration in India.<sup>3</sup> Their stress upon the beneficial effects of the legal codes was also, however, followed by their acknowledgement that applying the codes to a rural environment was a much more problematic affair. That the court was far from a

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<sup>2</sup> "This old lady had been sitting quietly outside with her mookhtyar" he writes, "but when her name was called out she rushed in and threw herself on the ground and demanded justice".

<sup>3</sup> See, for example, Joseph Chailley *Administrative Problems of British India* (London: Macmillan and Co., 1910) and *Minutes of the Honourable James Fitzjames Stephen 1869-1872* (Simla, 1898)

great boon to the people is reflected in the statistics provided by the administration reports, which suggest that given the size of the population of the province, the court was in fact rarely resorted to.<sup>4</sup> Time, cost, distance and delay were the practical factors that lay behind the decision to stay away from this legal institution. And when it was used, problems of false evidence, false witness, the image of the 'litigious Indian' and the high number of acquittals as opposed to convictions in criminal cases, plagued the authorities over the course of the colonial period.<sup>5</sup> The real culprits, it was found, managed to escape punishment through the various loopholes provided by the same legal codes which could be used to trap innocent members of the rural community. In other words, there was an uneasy recognition amongst the colonial authorities, that rather than providing justice, the court was instead responsible for much injustice.

The legal institutions of colonial India, and the weaknesses inherent within them, have been the subject of much scholarly attention. Radhika Singha has examined the clash between two different visions of sovereign right and authority and the subsequent 'piecemeal' way in which the British would try to place 'the rule of law in a dominant position amongst the symbols of authority' in the early colonial period.<sup>6</sup> In a similar vein, Kartik Kalyan Raman has concluded that the utilitarian

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<sup>4</sup> To provide one example, in 1906 out of 234,400 criminal offences reported, 155,093 cases were brought to trial whilst civil suits in the province numbered 412,615. This was out of a population of more than forty million Bengalis. See the *Police Administration Report for the Lower Provinces of Bengal for the Year 1906*

<sup>5</sup> Henry Ricketts in 1849 gave a rather colourful description of the litigious mania existing amongst the ryots of Chittagong, concluding that a 'Chittagong child comes into the world with an inclination to fee vakeels and buy stamped paper'. In 1910, it was stated that the courts of India were overburdened by civil suits which in 1856 numbered 730,000 yet by 1907 had risen to over one and a half million. See 'Question As To The Expediency Of Vesting Courts With Summary Jurisdiction and of Adopting a Plan of Assessment of Land Revenue Varying with the Season' in *Proceedings For January 1880 Judicial Department*. See also J Ramsay MacDonald, *The Awakening of India* (London: Hodder and Stoughton, 1910)

<sup>6</sup> Radhika Singha, *A Despotism of Law: Crime & Justice in Early Colonial India* (Oxford: Oxford University Press, 1998), p. 311

ideals were adapted to meet the practical demands of the Indian colony, whilst Jon Stewart has argued that codification, much lauded as the greatest gift to India by the colonial authorities, was in reality the product of anxiety and uncertainty.<sup>7</sup> Elizabeth Kolsky has put forward the argument that the legal codes of the colonial state were based upon racial divisions and inequalities, thus ensuring that justice would be a very one-sided affair, whilst David Washbrook has examined the ‘Janus-faced’ nature of the colonial legal system and the implications that the contradictory implications would have for the economic, social and political development of the colony.<sup>8</sup>

The placement, therefore, of law and justice within a broader context provides a valuable insight into how the contradictions of colonial rule could shape the response to law, order and justice in the colony. Yet, perhaps more emphasis can be placed on the workings of the court of law at the local level and the ways in which various groups could undermine imperial agendas and assert themselves in the process. These groups would include not only indigenous groups but also officials working within the system. In particular, the memorials of dismissed officials offer a glimpse into how official procedure had to be set aside by individual magistrates in order to maintain the moral economy of the rural environment. This would prove necessary due to the differences in British and Indian perceptions of justice, which subsequently would be responsible for the ways in which the resources of the court were manipulated and adapted according to local need. The ways in which the local

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<sup>7</sup> Kartik Kalyan Raman, ‘Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence’ in *Modern Asian Studies*, volume 28, number 4 (1994), pp. 739-791 and Jon E Stewart, ‘Anxieties of Distance: Codification in Early Colonial Bengal’ in *Modern Intellectual History*, volume 4, number 1 (2007), pp. 7-23

<sup>8</sup> Elizabeth Kolsky, ‘Codification and the Rule of Colonial Difference: Criminal Procedure in British India’ in *Law and History Review*, volume 23, Number 3 Fall 2005. D. A. Washbrook, ‘Law State and Agrarian Society in Colonial India’ in *Modern Asian Studies*, volume 15, number 3 (1981), pp. 649-721

population could employ the court to their own advantage and how local officials could assist in this process will be further explored in this chapter. The memorials also expose the difficult relationship which existed between the upper and lower levels of the administration which would further undermine the visibility of British power in the interior districts. The peculiarities of the legal structure, such as the system of appeals as well as the placing of judicial-executive functions in the hands of one official, heightened further the tensions which existed within the colonial network itself. How these tensions played out in local courts, and the impact they would have on the giving of justice, will also be examined in this chapter.

The other main intention of this chapter is to examine the system of trial by jury in India. It is important to examine this system due to two reasons. Firstly, its significance in colonial India has been little discussed by scholars, often serving as the backdrop to more significant events rather than being the central point of any scholarly investigation.<sup>9</sup> Secondly, the jury system, as this chapter will try to demonstrate, highlighted exactly what was and what was not acceptable amongst official circles. Quiet tolerance of local customs was one thing but to allow an Indian juror to sit within the British court, the very marker of colonial rule, and deliver justice his way was quite another. At the same time the legal safeguards with which jury trial would provide the European community posed the difficulty of explaining why this ‘bulwark of liberty’ was suitable for one group, but not the other. The difficulties and dilemmas that the colonial government faced in dealing with a

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<sup>9</sup> Elizabeth Kolsky and Edwin Hirschmann, in their respective discussions of the controversial Ilbert Bill of 1883, make passing references to the option of jury trial that was given to Europeans following the controversy and tend to focus primarily on the Bill itself and its aftermath. See Elizabeth Kolsky, ‘Codification and the Rule of Colonial Difference: Criminal Procedure in British India’ in *Law and History Review*, volume 23, Number 3 (Fall 2005) and Edwin Hirschmann, *White Mutiny: The Ilbert Bill Crisis in India and Genesis of the Indian National Congress* (New Delhi: Heritage, 1980)

system that was the subject of debate and criticism both in India and Britain, will thus be explored. By doing so, this chapter will be able to emphasise the fact that the giving and receiving of impartial justice in court was very much influenced by the conflicting and often contradictory needs and demands of both state and local society.

### **5.1 Justice, the Rural Community and the Colonial State**

The problem of giving and receiving justice through the institutions of the state is an issue that has received scholarly attention across various disciplines. At the heart of any given definition of justice lies the idea of fairness, conformity to the standards of a community as well as the adherence to some form of law. Social psychologist Morton Deutsch, who places the idea of injustice at the heart of any given conflict, has examined the theories and models of justice that can alleviate conflict. Central to his view on conflict resolution is the idea of a ‘shared moral community’ that engages in the process of negotiation and reconciliation.<sup>10</sup> Michel Foucault, on the other hand, has stated that justice is an idea invented by different types of societies as an instrument of a certain political and economic power or as a weapon against that power – an argument that has been critiqued as widely as the hypothesis of political theorist John Rawls.<sup>11</sup> The argument of Rawls, which can be considered to be the exact opposite of that of Foucault, centres on the idea of providing justice through what he has labelled ‘the veil of ignorance’. In other words, the veil is one that ‘blinds people to all facts about themselves which may cloud their judgement...only

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<sup>10</sup> Morton Deutsch, "Justice and Conflict." In Morton Deutsch and Peter T. Coleman, (eds), *The Handbook of Conflict Resolution: Theory and Practice* (San Francisco: Jossey-Bas Publishers, 2000), pp. 41-64

<sup>11</sup> See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2<sup>nd</sup> edition, (New York: Vintage Books, 1995)

through ignorance of these details can principles of justice that are fair to all be formed.’<sup>12</sup> Thus, whilst Foucault has deconstructed the term justice and has concluded that it is an idea that is closely linked to wider power structures, Rawls has offered an idealist hypothesis whereby the principles of justice can be decided upon through a complete separation from the moral values and beliefs that bind together a community.

A theory which ignores moral values and aspirations in favour of impartiality, however, is much weakened when one considers the broader problems associated with justice and the institutions that are designed to provide it. Michelle Maiese has pointed out that whilst in a broader sense justice can be defined as action in accordance with the requirements of some law, in a narrower sense it can be defined as fairness which is more ‘context bound...parties concerned with fairness typically strive to work out something comfortable...they work to ensure that disputants receive their fair share of benefits and burdens and adapt to a system of fair play.’<sup>13</sup> This context-bound justice can however come into direct conflict with the legal systems of the state. John Darley has expressed the view that citizens can feel alienated from authority when there is a clash in the principles that people and legal codes use to assign responsibility. This may ultimately weaken the ability of the legal system to act as an institution which represents the moral values of the society.<sup>14</sup> The issue for a legal institution such as the court, he has continued, is to reduce any

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<sup>12</sup> Critique found in Amartya Sen, *The Idea of Justice* (America: Harvard University Press, 2009), p. 72.

<sup>13</sup> Michelle Maiese, ‘Principles of Justice and Fairness.’ in *Beyond Intractability* edited by Guy Burgess and Heidi Burgess, Conflict Research Consortium, University of Colorado, July 2003. <http://beyondintractability.org/bi-essay/-prinicples-justice-fairness> (Accessed March 2011)

<sup>14</sup> See John Darley, ‘Citizens Sense of Justice and The Legal System’ in *Current Directions in Psychological Science*, Volume 10, Number 1, (February, 2001)

feelings of injustice and failure to do so can result in the court deepening, rather than resolving, the dispute.

Legal systems, then, are not entities within themselves and must reflect the beliefs and values of the society that they represent.<sup>15</sup> When this consensus is absent, citizens can withdraw support for what they now consider unjust institutions and possibly rebel and create new institutions.<sup>16</sup> The problem is compounded when people from different cultures and holding different views on justice, come into conflict and there is difficulty in reconciling their different perceptions of justice. Donna Artz, in her study of international criminal courts in war-torn regions and how they are perceived by the local population, has pointed to the difficulties that such tribunals experience in trying to get the local populace to understand the benefits of international institutions. Furthermore, she has argued that just because an ‘institution is international does not mean that the local population think it is better or that it has enhanced moral authority to punish wrongdoing.’<sup>17</sup> Whether justice is done, she continues, is also dependent upon more than a foreign court simply giving out what it considers to be fair justice. Whilst the legal institutions of the state have rigid guidelines about crime committed and its subsequent punishment, the views of the local populace regarding any wrongdoing extend beyond any simple theories of crime and punishment.<sup>18</sup> Louise Anderson, in her examination of Australian courts and their relationship with the Aborigine population, has similarly concluded that

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<sup>15</sup> Rebecca Anderson, ‘Perceptions of Fairness in the Justice System: A Cross Cultural Comparison’ in *Social Behaviour and Personality*, 31,(6), (2003) pp. 557-56

<sup>16</sup> Michelle Maiese, ‘Principles of Justice and Fairness’

<sup>17</sup> Donna E Artz, ‘Views on the Ground: The Local Perception of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone’ in *The Annals of the American Academy of Political and Social Science*, volume 603, number 1, (2006), pp. 231

<sup>18</sup> In the words of a displaced refugee, Artz has continued, ‘if the boy who cut off my arm goes to prison, well, maybe that is called justice. But even if he goes to jail, I will never get my arm back’. Ibid, p. 237. Artz uses this quote from Annette Rehr. ‘Sierra Leone: We want reconciliation. We will never forget. But we try to forgive’ in *Refugees Magazine*, 136, September 2004

justice transcends the complex and often rigid technicalities of state law. Rather, justice is flexible enough to ‘recognise and respect difference.’<sup>19</sup>

The association of the court with the giving of justice, and the analysis of whether it actually succeeds in doing so, is thus a main theme of various scholars. A further line of enquiry has resulted in some scholars going as far as to question the importance of ‘gaining justice’ to disputants who take their grievances to court. Indeed, the views of Michel Foucault on justice, whereby he has placed the term within the wider context of class struggle and has concluded that justice is merely an instrument of power, are echoed in academic literature on legal institutions. Robert Kidder, in his critical analysis of civil dispute settlements in America, has put forward the argument that individuals may resort to the court not to gain justice but to engage in what he calls a ‘cold blooded struggle over a limited resource...both sides claim prior “rights” or the violation of some form of principle of “justice” only because that is the appropriate language for those fora, not because it is what the partisans feel.’<sup>20</sup>

Marc Galanter, in his examination of dispute resolution forums in America, has similarly argued that law courts are resorted to by organisations who wish to discipline certain individuals. Access to the legal institutions of the state, argues Galanter, is very much determined by factors such as wealth. As the law expands and becomes more complex, those with the financial means and, significantly, more experience with procedures of the Court, can employ such changes to their own

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<sup>19</sup> Louise Anderson, ‘Law and the Desert: Alternative Methods of Delivering Justice’ in *Journal of Law and Society*, volume 30, number 1, (2003) p. 132

<sup>20</sup> Robert L Kidder., ‘The End of the Road? Problems in the Analysis of Disputes’ in *Law & Society Review, Special Issue on Dispute Processing and Civil Litigation*, Volume 15, Number 3/4, (1980-1981) p.724



personal advantage. What results, Galanter has concluded, is that the law court exacerbates the inequalities that it is designed to eradicate.<sup>21</sup>

The influence of personal motive and differing perceptions of justice upon the working of law courts is particularly marked when placed within a colonial context. What highlights the differences even further is the placement of indigenous agents within the law courts. This was clearly visible in the manner in which the criminal court in colonial Bengal responded to agents required to act as either assessors or members of a jury within the court. The system of assessors and jury trial had different functions during the course of a criminal trial.<sup>22</sup> But they would both experience similar obstacles when serving in a colonial court of law. The jury system in particular was used in a very small number of cases. An examination of how it was operated by local jury members is still, however, useful because it can highlight the disparities between two different models of justice. It can also emphasise attempts made by Indian agency, in the form of the Indian jury members, to assert themselves in a system far removed from their own local forms of decision making as well as the ways in which they could adapt the system according to their own understanding of punishment and justice.

It would be useful at this point to consider the differences between the jury system of the British court and the indigenous *panchayat*. Although both Indian jurors and assessors were required to operate according to the rules and regulations

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<sup>21</sup> Marc Galanter, 'Explaining Litigation' in *Law & Society Review: Litigation & Dispute Processing* volume 9, Number 2, Part Two (Winter, 1975), pp. 347-368

<sup>22</sup> Assessors were required to ask questions and bring out facts through their intimate knowledge of the native character and, by doing so, assist the trying judge. Their task was simply to offer their interpretation of events as well as their opinion about the case as a whole. The judge, crucially, was not obliged to agree with them and could set their views aside. The trial by jury system in India, in theory at least, was created to resemble the jury system of England and as a result the verdict of the Indian jury, regardless of whether the trying judge agreed or not, was intended to be final. See 'Courts of Justice in British India' in *Leisure Hour* (1883: August), pp. 466-469.

of the state, yet the beliefs of the jurors themselves resembled those found in native agencies such as the *panchayat*, which was even referred to as the ‘Indian trial by Jury’ by some. Robert Hayden, then, has argued that clashes arise because state institutions and indigenous forums require very different types of performance. The role of the court is to determine the facts through the hearing of evidence. Determination of facts in front of a caste *panchayat*, however, is not necessary because the facts are already known to the people. The aim, Hayden continues, is not to attach a categorical label to behaviour once facts are determined but to take ‘known behaviour and weigh its propriety.’<sup>23</sup> In a similar vein, Donald Breinweis in his analysis of the Fiji-Indian ‘*panchayat*’ as a therapeutic site, has argued that the aim of such an agency is not to judge competing accounts but to provide an opportunity to mend damaged interpersonal relations.<sup>24</sup> Bernard Cohn has stated that the *panchayat* is a ‘sounding board and public arena for venting feelings of injustice...the aim is to find a solution which will not sever ties but maintain them.’<sup>25</sup>

It was precisely the desire to preserve relations rather than to specifically isolate deviant members of the community that placed Indians working within the court in a difficult position. To give justice according to the official procedure of the court required an examination of different elements of a case and furthermore to categorise those different elements according to the Indian Penal Code. Such procedure also distinguished between the roles of both judge and jury, with the jury deciding questions of fact and the judge those of law. Evidence and circumstance

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<sup>23</sup> Robert Hayden, ‘A Note on Caste Panchayats and Government Courts in India: Different Kinds of Stages for Different Kinds of Performances’ in *Journal of Legal Pluralism*, 22, (1984), p. 44

<sup>24</sup> Donald Breinweis, ‘Dramatic Gestures: The Fiji Indian Panchayat as Therapeutic Discourse’ in *IPRA Papers in Pragmatics*, 1, Number 1 (1987), pp. 55-78. The spelling of the term ‘panchayat’ is Breinweis’ own.

<sup>25</sup> Bernard Cohn, ‘From Indian Status to British Contract’ in *Journal of Economic History*, volume 21, Number 4 (December, 1961), p. 617

were central in providing justice according to this model with the criminal law providing the regulations which would label and categorise deviant behaviour and punish accordingly. That such a lengthy and complex process was disliked by those having to decide criminal cases is clearly evident in official correspondence. In the correspondence relating to problems associated with criminal sessions trials, the inspector general of police in 1879 wrote to the Secretary to the Government of Bengal stating that the system of assessors was effectively useless with the authorities unable to procure suitable candidates.<sup>26</sup> Echoing the problems associated with the establishment of *chawkidari panchayats*, discussed in a previous chapter, reluctance to participate was due to differing perceptions as well as practical concerns of money, time and inconvenience. There was also the potential loss of status with the inspector general noting that *zamindars* did not fully appreciate the ‘honour of assisting the bench because such an honour involved their sitting with a trader who in ordinary circumstances, would only be allowed to stand in their presence.’<sup>27</sup> Reluctance to serve as assessors was still strong nearly twenty years later when the sessions judge of Bhagalpur noted that Marwaris were extremely reluctant to express an opinion and would often remark that they ‘only know how to sell clothes, not try cases.’<sup>28</sup>

The ‘time honoured institution’ known as the jury would fare no better. Introduced in 1862 in an attempt to allow Indians to familiarise themselves with a

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<sup>26</sup> Pleaders, he argued, took a one-sided view of the evidence. *Zamindars* were more likely to be instigators rather than independent judges resolving disputes and *mahujans* generally ‘fell asleep during the trial’. See ‘James Munro, Inspector General of Police to the Secretary to the Government of Bengal, Judicial Department, No. 9832, dated Calcutta, 14 July 1879’ in ‘New Criminal Procedure Bill’– Bengal Proceedings for the Year 1880

<sup>27</sup> Ibid.

<sup>28</sup> ‘From the Chief Secretary to the Government of Bengal to the Secretary to the Government of India, Home Department. Dated Darjeeling 30 September 1896. No. 250J’ in Extension of Trial by Jury in Bengal, L/PJ/6/445, File 707

foreign law, the jury system in Bengal highlighted some of the problems of planting a foreign institution amongst a people whose views and sensibilities on punishment differed from those of the colonial government. As was noted in the previous chapter, it was difficult for employees of the state such as the policeman to penetrate rural networks using official methods. The only solution was to adapt official procedure according to rural practices. Inside the courtroom, the Indian juror similarly could not remove public opinion from his decision-making process which would be at odds with their official duties when deciding any criminal case. Some officials would note the inability of Indian jurors to fully understand the criminal law as well as their peculiar reasoning in reaching a verdict.<sup>29</sup> Others would take a more sympathetic view in which jurors tried to reach what they considered to be 'just' decisions.<sup>30</sup> The Indian members of the jury, it was often remarked, 'disliked the severity of the Indian Penal Code, with the sessions judge of Hooghly noting that they considered the colonial penal system 'unduly harsh and inelastic.'<sup>31</sup> In the correspondence relating to the controversial decision of the Lieutenant Governor of Bengal to further restrict the role of the Indian jury in 1892, to be discussed more fully further on in this study, various district officials noted that jurors were reluctant to convict in cases of capital punishment, often evading the responsibility by acquitting the accused instead and even intervening in cases when they considered the penalty too severe a punishment.<sup>32</sup>

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<sup>29</sup> See *Police (Beames) Committee Report* (1891)

<sup>30</sup> 'Officiating Sessions Judge in Dacca, 2<sup>nd</sup> Sept 1890' in Papers Regarding Trial By Jury in Bengal, L/PJ/6/334, File 2092

<sup>31</sup> To offer another example, in 1882, the Officiating Inspector General of Police cited a case in which the juryman told the foreman that he would not convict because he was told the case was either murder or nothing. See *Report of Police Administration for the Year 1882*

<sup>32</sup> The Sessions Judge of Murshidabad noted that jurors tended to twist the law in order to prevent the judge from inflicting heavy punishment. See 'H Beveridge, Additional Sessions Judge of the 24

How jurors chose to act when serving on the jury, a western innovation widely considered as an experiment on Indian soil, proved to be a cause for concern amongst official circles. The inspector general of police in 1890 dismissed the jury system as a 'useless exotic', stating that if native magistrates were fearful of convicting a criminal then little could be expected from a native juror.<sup>33</sup> The issue of faith was also said to influence the verdict of the jury, with some officials arguing that it was difficult to convince jury members to convict a Brahmin accused.<sup>34</sup> Whilst the district magistrate of Murshidabad upon further enquiry of a murder case found that the jury had acquitted the accused because the 'trial had been held in the month of Baisakh, which should be devoted to works of charity and mercy!'<sup>35</sup> The inspector general of police also regarded any discussion of the case by the jurors outside the court as evidence they had 'been got at by interested outsiders', further noting that there had been a case in one district in which the verdict had been 'openly talked about for three days before the trial ended.'<sup>36</sup>

The discussion of conflict amongst members of the community, then, conflicted with what the inspector general regarded as official procedure, with its emphasis upon the removal from any external factors which would impede the attempts to provide fair and impartial justice. However, as has been noted, if one

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Pargannahs to the District Judge of the 24 Pargannahs, dated Alipore, 9 July 1890' in Papers Relating to Trial by Jury in Bengal, L/PJ/6/334, File 2092

<sup>33</sup> 'J C Veasey, Inspector General of Police to the Chief Secretary of Bengal, dated 2 September 1890, No. 11832, Calcutta' in Papers Relating to Trial by Jury in Bengal, L/PJ/6/334, File 2092.

<sup>34</sup> See for example 'Empress versus Kali Kishore Chakravarti and Others' in Calcutta Law Reports. Others however would refute these claims, stating that between 1887 and 1892, out of 404 murder cases tried in jury districts of Bengal, 23 of persons charged with murder were Brahmins. 8 went on to be convicted and in 2 cases it was the High Court, and not the jury, who acquitted. See 'Trial By Jury in Bengal' in *Speaker* (1893: June 3), pp. 621-623

<sup>35</sup> 'Reports and Opinions Received by the Beames Committee. From J F Stevens to the Under Secretary to the Government of Bengal, Judicial, Political and Appointment Departments, dated Darjeeling 17 Sept 1889' in Appendix in *Police (Beames) Committee Report* (1891), p. cix

<sup>36</sup> *Ibid.* Indeed, contact between jury members and the public was made easier by the fact that the authorities could not keep the jury apart from the public if cases lasted for more than a day, which was often a regular occurrence.

accepts the view that native agencies show interest in the extended discussion of conflict and maintaining relations rather than the complete removal of deviant members from the community, then the decision to ‘openly talk for three days’ does not seem so out of place within the Indian environment.

The role of the jury in India may have been declared as essential by some because it provided the Indians with a say and responsibility in a colonial administration foreign to their habits and customs. However, official emphasis upon circumstantial evidence and the inferences of fact in the process of discriminating between truth and falsehood only highlighted the differences between the two systems, with the methods of the jury often considered unacceptable by the court.<sup>37</sup> In theory at least, the Indian jury would be referred to as the ‘sole judges of fact’, with the judge assisting them in making sense of available evidence and determining exactly what the punishment should be according to law.

In practice, however, the lines between questions of law and questions of fact were often blurred and the clash between judge and jury made itself apparent in a number of ways. In the first instance, jurors were often conscious of having to deliver any verdict in accordance with the views of the judge, with many altering their original verdicts following ‘suggestions’ from the supervising judge, if only to bring a speedy conclusion to the case and escape the responsibility of serving on the jury.<sup>38</sup>

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<sup>37</sup> In ‘Queen Empress versus Tita Sheik’, a case transferred to the High Court, the judge who originally tried the case disagreed with the verdict of acquittal passed by the jury, who had based their decision upon the absence of an eyewitness despite the strong circumstantial evidence available. See *Calcutta Law Report*, number 22, dated 9 March 1889

<sup>38</sup> The Judge of Assam Valley Districts, recalling a case of rioting, noted the reluctance of the jury to convict all members of the accused party. It was only upon being pressed by the Judge who pointed to the evidence that weapons were used that the jurors ‘quickly deliberated for another 15 minutes...they came back with the verdict that they found only two members guilty...the rest of the accused party

A desire to avoid serving on the jury was not only due to the odious nature of critically examining key evidence but also because it involved jury members in judging complex rural relationships according to legal criteria. The *Trial of Shama Charan Pal* was a case involving the murder of a Brahmin by his fellow *panchayat* member and concerned questions of adultery and intrigue. In the end, the original verdict of guilty would be overturned in favour of an acquittal, suggesting not that the jury were ‘completely convinced of the innocence of the accused’ but that the flawed evidence highlighted by the defence provided them with an opportunity to avoid giving out a harsher punishment. To have acted strictly according to law would have been to ignore the complexity of local relationships, particularly those involving indigenous institutions like the *panchayat*, which required more than a simple verdict of guilty or not, to restore order or resolve disputes within a locality.

Other instances made visible the difficulty of native jurors working within a foreign system which demanded a complete monopoly of methods of punishment as well as the procedure which preceded punishment. But emphasis upon discovery of truth and evidence when the truth was already known to the local community undermined the purpose of the jury system as well as control over how the institution would work. One juror privately remarked on his decision to acquit five people in a murder case that it was better that ‘one man be killed than five others be killed for killing him.’<sup>39</sup> Others would set aside cumbersome and lengthy procedure. The sessions judge of Murshidabad, for instance, recalling a murder case over which he presided in 1880, noted that the eventual verdict of the jury, that of guilty, was not

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remained, in the eyes of the jury, not guilty’. See *Police Administration Report for the Lower Provinces of Bengal for Year 1888*

<sup>39</sup> ‘Letter from F.F. Handley, Sessions Judge of Nadia to the Secretary of State to the Government of Bengal, Judicial Department, No.477, dated Kishnagar, 19 July 1890 Enclosure 5’ in Papers Regarding the Trial by Jury in Bengal, L/PJ/6/334, File 2092

the result of an analysis of circumstantial evidence but instead was the result of a much simpler process, the jury admitting that they knew the evidence was clearly concocted but ‘everyone knew who the men were...so we convicted.’<sup>40</sup>

The importance placed upon the idea of certainty is also reflected in an instance provided by the inspector general in 1882 who noted the ‘odd notions’ that jurors held about their duties, with one juror ‘justifying his acquittal of one case on the grounds that he was not as certain of the prisoner’s guilt than he was of the existence of the table standing in the room where he was sitting.’<sup>41</sup> Within the native context, certainty was a key feature in the process of determining appropriate punishment, a feature aided by the fact that culprits were often known to the local community.

The colonial court of law also demanded certainty. But it was a certainty which rested solely upon circumstantial evidence, the examination of which would be further complicated by complex and lengthy legal procedures. Guilt or innocence rested upon whether this evidence met the requirements of various legal codes. The inspector general may have branded the decision making process of the jury members as ‘odd’ but the fact remains that, circumstantial evidence, which was a key feature of the British system of justice, could itself be easily tampered with. And that too was made possible by the inconsistencies inherent within the legal procedures. The British system of law was one which could also easily allow an accused to escape punishment on the basis that there was a lack of evidence. The fact that the

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<sup>40</sup> ‘H Beveridge, Additional Sessions Judge of the 24 Pargannahs to the District Judge of the 24 Pargannahs, dated Alipore, 9 July 1890’ in Papers Relating to Trial by Jury in Bengal, L/PJ/6/334, File 2092

<sup>41</sup> *Police Administration Reports for the Lower Provinces of Bengal for the year 1882*



British publicly insisted on adhering to this flawed legal procedure would have appeared just as odd to Indian jury members.

The manner in which the Indian juror chose to respond to the jury system within the court demonstrates the attempt to adapt the system according to their own sensibilities. In the process, one can observe the ways in which jurors asserted themselves within the confines of a foreign system. By realising that the system was incompatible with more local forms of decision making, jurors proceeded to work the jury system in ways that were more suited to their own, and the locality of which they were a part, views about justice. In this way, they could subvert imperial agendas by undermining British power within the court. At the same time, however, one can also suggest that there was no deliberate intention to undermine this power. Jury members, in a sense, did try to follow the procedures of a foreign court. The system of jury trial was a form of collaboration in which members of the locality, aided by the state, would mete out justice to the people. Collaboration involves, in a sense, the ability to mould and re-shape a system so that newer ideas can also be accommodated. Members serving on the jury trial did attempt to follow the rules of the court. But the application of a rigid system, one which required jury systems to provide a final verdict, was unworkable in an environment in which there were a number of alternative interpretations, all considered equally valid and given equal levels of importance.

It was perhaps in recognition of the differences between foreign and native legal views that the colonial authorities ensured that the trial by jury in India was as limited an experiment in India as it was foreign. Introduced in only six of Bengal's forty-two districts in 1862, and those too in what were considered to be advanced and

educated districts surrounding the metropolis, the Indian juror would be excluded from considering cases involving political crimes. In cases which were triable by a jury, the authorities were careful to place stringent checks on the independence of the jury.<sup>42</sup> Even by the turn of the twentieth century, statistical reports would demonstrate that juries tried a very small number of cases leading many officials to assert that the jury system had no impact on criminal returns.<sup>43</sup>

The attempts by the colonial authorities to severely restrict the system did not, however, prevent the local community from employing other resources of the court to gain their own type of justice, one that, as noted earlier, involved a compromise rather than outright victory. The focus on gaining justice that suited their own sensibilities was commented upon by one Punjab official, who noted that outside the presidency towns, the 'laws were badly constructed, awkwardly borrowed from Europe and India has no need for them at all.'<sup>44</sup> He emphasised the conflict between law members ignorant of the conditions of India, and the district officers who were aware of the practicalities of colonial rule in India and the subsequent need to adapt to the local environment. Thus, the process of Indians trying to gain their own kind of justice was aided by the magistrates themselves, whose memorials appealing against their dismissal would demonstrate that they had to operate in ways that were more in line with the moral economy of the area in which they were posted. The following section considers some of the ways in which

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<sup>42</sup> The most important of which was the section 307 introduced in the 1872 edition of the Criminal Code of Procedure, which allowed a judge to pass on a case to the High Court if he disagreed with the verdict of the jury.

<sup>43</sup> The number of persons tried by jury during 1897 was only 848, when the number of persons tried for all offences during that year stood at 271, 515. By 1901 the number of trial would increase by a small number to 1148

<sup>44</sup> See Joseph Chailley, *The Administrative Problems of British India*, p. 376

justice was gained and the ways in which magistrates had to adapt official procedure in order to meet the expectations of the local populace.

## 5.2 Justice in the *Mofussil*

Access to justice in colonial India was influenced by factors ranging from difference and inequality to the clash between British and Indian perceptions of justice. Indeed, it was here that the Western preoccupation with solving disputes met local forms, where the emphasis was on fairness rather than outright victory. The impact of the clash between two different models of justice has been examined by various scholars. Bernard Cohn has emphasised the disparity between Western theories and practicalities, adding that although traditional legal systems were made ineffective by the colonial legal structure, they were not in fact replaced by them. Instead, local groups could employ and adapt the colonial system according to need.<sup>45</sup> Similarly, Marc Galanter has argued that the system allowed the local ‘underdogs’ an opportunity to challenge the decisions of indigenous forums such as the *panchayat* and take their grievance to the court instead.<sup>46</sup> Oliver Mendelsohn, in his analysis of land disputes in present-day India, has argued that the complex issue of land disputes subjected to foreign laws during the British period, is the crucial factor that explains the pathology of the Indian legal system, with courts placed with the responsibility of handling a ‘uniquely entrenched class of disputes.’<sup>47</sup> In a similar vein, Robert Kidder has examined the internal workings of the modern Indian court and argues that courts

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<sup>45</sup> See Bernard Cohn, ‘Anthropological Notes on Disputes and Law in India’ in *American Anthropologist*, Volume 67, Number 6, Part 2 (December, 1965), pp. 82-122; ‘From Indian Status to British Contract’ in *Journal of Economic History* 21: pp. 613-418 and ‘Some Notes on Law and Change in North India’ in *Economic Development and Cultural Change* 8: pp. 79-93

<sup>46</sup> See Marc Galanter, *Law and Society in Modern India* (Oxford: Oxford University Press, 1989)

<sup>47</sup> See Oliver Mendelsohn, ‘The Pathology of the Indian Legal System’ in *Modern Asian Studies*, Volume 15, Number 4, (1981), p. 826

cannot provide quick, decisive outcomes because the judicial process is influenced by the process of negotiation rather than adjudication, ensuring that the court resembles not a legal institution but a complex social system.<sup>48</sup>

The idea of a complex social system is certainly evident in the types of cases that were presented in the court which demonstrate that the relevance of the colonial court in the lives of the villagers was really dependent upon the needs of certain groups at certain times. Magistrates may have been urged to thoroughly investigate the matter and ensure that the 'cause of such dispute no longer exists' before striking off proceedings in such cases but the manner in which the resources of the court were employed made this a difficult task to perform. According to one report submitted in 1911, caste *panchayats* tended to pass cases on to courts where they could not enforce their decisions or in cases where it was felt that the aggrieved party would go to the official courts and prosecute the *panchayat*. Another grievance of court officials was the improper use by complainants of both civil and criminal courts. The district superintendent of police for the Orissa division noted that, in the first instance, it was customary for the people to resort to the criminal courts, which were a less costly and equally a less time-consuming alternative to the arduous procedure of the civil courts. The consequence of this was the high volume of 'false cases' in the criminal courts, many of them of a petty nature. That is, what were essentially civil disputes were instead presented in front of the criminal courts. Dismissed as the proneness of the Indian to exaggerate any dispute, false cases would nonetheless act as a major factor in the collapse of cases that made their way to the sessions court.

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<sup>48</sup> Robert Kidder, 'Courts and Conflict in an Indian City: A Study in Legal Impact' in *Journal of Commonwealth Political Studies*, 11, p. 121

Yet, although magistrates were accused of failing to sift evidence thoroughly, at the same time authorities were forced to admit that there was ‘an element of truth in every exaggerated claim.’<sup>49</sup> Reasons could vary widely as to why civil disputes were so altered that they fell within the scope of the criminal court. The emphasis upon the control of crime and disorder within the colony, and the subsequent focus upon disputes of a criminal nature, meant that criminal cases were responded to more quickly by the authorities than those reported to the civil court. The impact of colonial policy upon the issue of land settlement in a colony in which property was tied to the rights of a collective unit rather than an individual was clearly felt in the British court. Many of the disputes in the criminal courts involved disagreements over land or rent enhancement, which, as many court officials would note were of a civil nature. The ways in which they were presented as criminal cases were numerous. During one Muharram festival, for instance, it was reported that what was essentially a dispute over rent enhancement between a Hindu landlord and his Muslim tenant was falsely claimed to have its origin in a dispute over a matter of faith.<sup>50</sup> The magistrate of the division of Orissa stated that no *mukhtear* would omit to insert a cognisable section in any petition if he wanted a police investigation that preceded appearance in the criminal court.<sup>51</sup>

That the two, both civil and criminal disputes, would become inextricably entwined was an issue that the British courts had to grapple with over the course of the colonial period. For the feuding parties, the colonial authorities would provide a

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<sup>49</sup> See *Police Administration Report for the Year 1889*. The Lieutenant Governor of Bengal believed that there was ‘no malicious intention behind false claims....there is however a proneness to exaggerate, to look at things perversely, to be blinded by anger or self interest.’

<sup>50</sup> See ‘Report for Additional Police in the Jurisdiction of Samastipur police station and outpost Tajpur during the Bakr-Id and Muharram of 1903 from 5 March to 20 April 1903’ in Proceedings of the Lieutenant Governor of Bengal, Police Department, Calcutta, February 1903

<sup>51</sup> *Police Administration Report for the Year 1886*

more 'legitimate' arena to continue long-running disputes. In the locality, use of force and violence could be a key feature of settling conflict. By taking the dispute to the court, both parties could combine the resources available to them. The civil order gained in the court would allow the 'battle' to continue in the legitimate arena of the court whilst the feud would continue in a not so peaceful manner back in the locality. In some instances, various legal pretexts were resorted to in order to continue the dispute in such a fashion.<sup>52</sup> In other cases the order of the court would act as a justification for violence, at least for the parties concerned. In 1904, in a dispute over a plot of land, when an order was passed in favour of one cousin over another to 'build fences and plant trees', an appeal was made by the defeated party to the High Court, which set aside the original order. On the strength of this court order, the now victorious clique made their way to the disputed site and forcibly 'destroyed plants and tore down trees...their opponents came along with their *lathials* and further acts of violence ensued.'<sup>53</sup>

One of the most widely discussed disputes was that involving the European firm Watson and Company and their tenants, from whom they demanded enhanced rent. In response to the tenants' refusal, employees of the firm, whose activities were 'shrouded in secrecy due to the silence of the police and the inability of district officers to tour the interior districts employed a number of methods, ranging from 'illegally seizing cattle to instituting false cases against the tenants.'<sup>54</sup>

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<sup>52</sup> In the Dacca Division, one *zamindar* had obtained a Civil Court decree against another. After several failed strategies, his rival sent a civil court peon on the pretence of attaching certain crops of a defaulting tenant and smuggled a number of *lathials* into the premises. This subsequently led to a violent struggle between the two parties taking place. See *Report on the Police of the Lower Provinces of the Bengal Presidency for the Year 1881*

<sup>53</sup> See the case of Dharani Kanta Lahiri versus Girija Kanta Lahiri, the zamindars of Kalipur in the jurisdiction of Iswarganj police station in *Police Administration Report for the Year 1904*

<sup>54</sup> Indeed, the disputes between the firms and their tenants had been drawn out for over twenty years with the Inspector General of Police in 1881 hoping that the question of the rights of parties would be

The court did not only, however, act as a disguise allowing the continuation of disputes through violence and force back in the locality. Marc Galanter and Catherine Meschievitz have suggested that the compromise made between rival groups in court, rather than being specious was actually a process of negotiation which allowed them ‘to vent their frustrations whilst maintaining their relationships.’<sup>55</sup> The colonial authorities urged that the cause of dispute be recognised and resolved, but, as Galanter and Meschievitz have argued, long-term relationships produce all sorts of petty conflicts and quarrels. Single disputes, they have stated, can be ‘resolved but the underlying conflict endures.’<sup>56</sup> Both parties recognised the rules that had to be followed in that particular dispute but these rules could change when other disputes arose.

The search for the underlying cause of the dispute always proved futile as the ‘dispute’ was reflective of the deeper, underlying conflicts that determined relationships within the village. These disputes were not restricted to the local community as George Graham demonstrated in his memoir. He recalled the dispute between a Hindu and European landholder, the former bringing a serious allegation against the latter. The matter was only resolved when they agreed to compromise the case and ‘try and settle matters amicably...the European would compromise the three small cases that he had against his opponent.’<sup>57</sup> Similarly, the family quarrel between

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peaceably fought out in the civil courts. This of course was not to be as a special report in 1903 provided a detailed discussion of the dispute over enhanced rent and the ‘repressive measures’ employed by the firm against their own tenants. Attempts to remove watchmen from chaukidari land that had been transferred to the firm were also noted. See *Report on the Police of the Lower Provinces of the Bengal Presidency for the Year 1881* and ‘Transfer of Resumed Chaukadari Service Lands in the Estates of Messrs. Watson and Co. in District of Midnapore, Numbers 22-23, File P1-L/6 1’ in Bengal Proceedings, Police Department, February 1903

<sup>55</sup> Marc Galanter and Catherine Meschievitz. ‘In Search of Nyaya Panchayats: In Search of a Moribund Institution’ in *The Politics of Informal Justice Comparative Studies*, volume 2, (1982) p. 68

<sup>56</sup> Ibid.

<sup>57</sup> George Graham, *Life in the Mofussil, or, The civilian in Lower Bengal* (London, 1878), pp. 160-161

Sukdeo and Pryag Naran Singh, a longstanding dispute over rights to a plot of land which resulted in two powerful factions and various disturbances of the peace despite both parties having gone to the civil court. The trying magistrate noted that disputes could only be settled in court ‘with regards to the matter then before me’ whilst another magistrate, presiding over yet another quarrel between the two parties, concluded that the ‘two parties will no doubt have a good fight locally once this case is decided.’<sup>58</sup>

What is noticeable about these cases is their handling by the state. For all their emphasis upon the resolving of disputes that were produced before the court, colonial authorities seem to have provided a controlled environment in which disputes could be played out. In the case involving Sukhdeo Pryag and others of a similar nature the emphasis was on dealing with cases summarily.<sup>59</sup> That is, the quartering of additional police forces in sensitive areas whilst placing the expenses upon the inhabitants. Indeed, within such reports there is detailed discussion of the nature and cause of the dispute, as well as its continuation despite the presence of the courts. There was also an implied resignation that the only option was to allow the continuation of disputes that could still be contained by the additional police provided by the state. Disputes which could not be controlled required a stronger response such as the handling of the so-called ‘Munda outbreak’, a cultivating class of the Chota Nagpur division, which had risen against intermediate tenure holders for over forty years. Having employed both real and false Calcutta pleaders and taking

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<sup>58</sup> See ‘Quartering of Additional Police in Village Mozuffarpore – Narga in the District of Gaya’ in Bengal Proceedings, June 1905

<sup>59</sup> See ‘Quartering of Additional Police in the Village of Kusma in the District of Monghyr’ in Proceedings of the Lieutenant Governor General of Bengal, Police Department, June 1905, pp.1-10 , relating to the dispute between two factions, one of whom tried to falsely implicate the other in a railway obstruction case.



their grievance to the colonial courts, leaders eventually declared that ‘we have appealed to the sarkar for redress and got nothing...now there is nothing left us but to look to one of our own men.’ What followed was the creation of a religious leader, who gathered a movement over certain areas of the region, leading to a panicked response from the colonial authorities to try and put down what was labelled as an ‘armed rebellion...led by the ambitions of a man who, under the garb of religion, has assumed a purely political role.’<sup>60</sup>

The recognition that disputes within the native environment could never be successfully resolved is present in various reports. These reports discuss the difficulties of dealing with false cases which were presented in court. False cases presented the problem of trying to find out the truth from a mass of evidence, which was exaggerated but ‘not entirely false’, reflecting the ‘peculiarities’ of a people ‘prone to exaggeration.’ Indeed, the placing of civil disputes within the criminal court was not the only difficulty faced by the authorities. In 1890, for instance, it was reported by the magistrate of Dacca that cases of adultery were reported by the police as theft in order to avoid the disgrace that the injured party would experience in such cases of infidelity. This demonstrates not only the important role of the policeman in adjusting the legal network so that it was more in line with rural sensibilities but also the crucial role of the local community in deciding the manner in which grievances were to be addressed within the legal arena. For the purposes of justice, simply appearing in court was equal to a conviction as the accused was put through as much

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<sup>60</sup> ‘Reverend F R J Hoffman, Catholic Missionary of Sarwadah, thana Khuati to the Commissioner of the Chota Nagpur Division. dated Sarwadah, the 14 January 1900’ in Outbreak of Mundas in the Ranchi and Singhbhum districts, L/PJ/6/6/533, File 410

expense, trouble and inconvenience as possible. Thus, in a sense, and particularly in sensitive matters such as infidelity, the complainant could receive justice, albeit one that conflicted with the ideals of the colonial state, whilst at the same time managing to avoid the scandal and shame which such an act would potentially bring if it were officially recorded.

Not all cases of infidelity, however, were shrouded in secrecy due to concerns over honour. The low number of registered marriages amongst Muslim communities led to the British court facing ‘endless litigation’ and wronged parties failing to receive justice on account of being unable to provide evidence of infidelity. With no document to prove a couple were married, it was a ‘prevailing custom’ for fathers to get their daughters back after six months of marriage and find another suitor on ‘receipt of money.’ For the wronged husband, cries of infidelity would be useless in a court dependent on documentary evidence. The only way to receive any justice was to put forward a false case of assault, the dispute ending only when the ‘wrong-doer’ had been inconvenienced and harassed through court and, finally, through the receipt of money. Justice in the court through the right channels may not have been possible but individuals could use the weaknesses of the system to ensure that the Indian could receive his own form of justice and adjust the court to meet his own requirements.

The ability to successfully adapt the court in accordance with the local environment was made possible by the adherence of magistrates themselves to maintaining the moral economy of the vicinity within which they were posted. By adapting colonial procedure to the needs of the locality, officials often undermined the visibility of British power and authority in the interior districts, with some

officials directly and indirectly challenging the system of criminal administration itself. The manner in which colonial procedure was often contested by officials of the state, and why, will now be discussed in the following section.

### **5.3 Imperial Agendas, Local Magistrates and the Law**

The cultural aspects of rural crime within which honour, status and complex familial relations were key features, often ensured, as one scholar has noted, that judges were placed in the dilemma of having to satisfy two conflicting demands. Whilst the state demanded adherence to the law, the local populace, with whom the judge was in direct contact with, may have demanded action that was more in line with the cultural norms and expectations of the people.<sup>61</sup> In a similar vein, Hung-en Sen, in an analysis of the transition from authoritarian to more democratic states, has pointed to the difficulty of trying to ensure that excessive concerns over efficiency and low conviction rates do not undermine the most ‘basic mission of the court, that of doing justice.’<sup>62</sup>

Within the context of the colonial environment in India, the magistrates in the interior districts were faced with similar dilemmas of trying to ‘do justice’ in a system, within which they faced considerable pressure from their superior authorities to convict. In 1891 the sessions judge of Pabna and Bogra complained that the Lieutenant Governor had inspected all the cases which the judge had acquitted. The judge emphasised that the examination had taken place in his absence and in a

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<sup>61</sup> Samir Rizkalla, ‘Crime and Criminal Justice in the Developing Countries’ in ‘Crime and Criminal Justice in the Developing Countries: Summary of the Discussions of the Fifth International Symposium in Comparative Criminology, Santa Margherita di Ligure (Italy) May 16 - May 18, 1973’ in *Acta Criminologica*, volume 7, number 1, (1974), pp. 169-191

<sup>62</sup> Hung-en Sung, ‘Democracy and Criminal Justice in Cross National Perspective- from Crime Control to Due Process’ in *Annals of the American Academy of Political and Social Science*, volume 605, (May 2006), pp. 327

‘purely executive atmosphere’, with only the inspector general of police present. He further claimed that he was being unfairly attacked by the Lieutenant Governor and that the continuous pressure upon magistrates resulted in them ‘keeping their rubbish to themselves.’<sup>63</sup> The judge particularly emphasised that contrary to the opinion that the police were unfair targets within the criminal justice system, they, with the support of the executive authorities, could place undue pressure on the magistrate to gain higher levels of conviction. Pressure also led to a falsification of conviction rates. The sessions judge of Backergunge noted that the district magistrate of Patuakhali had been informed by the commissioner of the division that until he reported a higher percentage of conviction, he would not be promoted. The district magistrate subsequently raised his percentage from forty to seventy percent. Similarly, the excise deputy collector informed the sessions judge that he was aware that the majority of excise prosecutions in his local area were ‘pure fabrications but that his promotion depended on it...it is the fault of the Government and I must eat.’<sup>64</sup>

Following the strict letter of the law would in any case produce ineffective results because the provisions of the law were incompatible with the requirements of the locality. The memorials of dismissed magistrates offer a valuable insight into the reasons behind the decision to adapt official procedure according to local methods that were more in keeping with the moral economy of the village. Failure to do so placed officials at a disadvantage as Govindji Desai of the Bombay presidency found out. His insistence on following the strict letter of the law and weakening the alliances formed between subordinate court officials and the corruption that would

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<sup>63</sup> ‘Sessions Judge of Pubna and Bogra, Mr Bradbury reporting on the Administration of Criminal Justice in those districts during year 1891’- extract, paragraph V, of letter No.15 C.D., dated the 4 February 1892’ in L/PJ/6/338, File 217

<sup>64</sup> See ‘Extract from Letter No.71C, dated 28 January 1892, from Sessions Judge of Backergunge’ in L/PJ/6/338, File 217

result from such a union, placed Desai at the centre of various accusations and transferrals.<sup>65</sup>

Other magistrates were sensitive to the conditions of the local environment such as Moulvi Hossein, who was dismissed for the preponderance of lengthy cases and low conviction rates within his court. In his defence, he argued that it was not possible for cases to be resolved quickly because ‘both parties must be satisfied’, arbitration and discussion being key features to any resolution.<sup>66</sup> Dwarkanath Banarjea was another magistrate who was accused of ‘purposeful procrastination’ towards the prompt handling of cases.<sup>67</sup> The sessions judge who took control over one case remarked that it was an extremely simple case with only one issue of contention, which was whether the ‘plaintiff went to the *zamindar’s* *cutcherry* of his own free will or was forced.’<sup>68</sup>

Whilst the sessions judge chose to treat the incident as a single grievance, the decision of Banarjea to continuously postpone the case suggests that he was aware that he could not isolate one single incident from the broader context. Following the argument put forward by Marc Galanter, that long-standing relationships produced all sorts of petty quarrels, Banerjea, it can be argued, recognised the court as yet another forum in which the purpose was not to resolve the dispute indefinitely but simply to allow complainants to vent their frustrations in court. By continuously postponing the case in court, Banerjea may have ignored legal procedure but handled

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<sup>65</sup> G.G. Desai, *Some Experiences of a Mamlatdar-Magistrates Life* (Ahmedabad: Ranchodlal Gangaram, 1906)

<sup>66</sup> See ‘Dismissal of a Moonsiff’ in Bengal Proceedings, April 1873, Judicial Department, Number 900, dated Fort William, 4 April 1873

<sup>67</sup> See ‘The Case of Deputy Magistrate Baboo Dwarkanath Banarjea’ in Proceedings, January 1873, Judicial Department

<sup>68</sup> Ibid.

the case in a way that was recognisable to the feuding parties, allowing them the legal space in which they could both quarrel and negotiate.

Informality would also be a significant feature in the giving of justice at the local level. In 1906, the district magistrate of Backergunge was rumoured to have been in the habit of disposing criminal cases in his private room and ‘occasionally in his private residence’, his confidential diaries containing only details of the efforts to suppress political crime within his region, thus indicating that certain crimes could be handled in a more informal manner.<sup>69</sup>

The case of C. J. O’Donnell, who will be referred to again further on in this section, is a particularly telling example of a magistrate who would ‘take an interest in the successful working of his sub-district but was not concerned with the details.’<sup>70</sup> In 1881, he was removed from his acting appointment as a Joint Magistrate, deprived of the power of trying criminal cases summarily and transferred from Jessore to Mymensingh. One of the accusations levelled against O’Donnell was his tendency to employ what was known as the *kaifiyat* procedure. This was a procedure which allowed O’Donnell to treat cases summarily, simply allowing both sides to come before him and offer their explanations. Cases of a more serious nature, it was claimed, were ‘altered’ so that they no longer fell within a particular section of the penal code and could instead be tried summarily by O’Donnell himself.

To the authorities, this was an indication of ‘laziness and inertia’. To O’Donnell the treatment of cases summarily was important in a countryside ‘where

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<sup>69</sup> See ‘House of Commons Question on the Disposal of Cases by the District Magistrate of Backergunge dated 21 June 1906’ in L/PJ/6/766, File 1841. See also ‘Confidential Diaries of the District Magistrate of Backergunge, Mr R Hughes Buller, Eastern Bengal And Assam, dated 5 September 1907’ in L/PJ/6/828, File 3259

<sup>70</sup> See ‘The Case of C J O’Donnell Appealing Against Dismissal From The Role of Joint Magistrate’ in L/PJ/6/75, File 985

nothing is as it seems', citing the various cases of a civil nature which made their way to the criminal court and, crucially, the inability of the colonial courts to successfully resolve such disputes.<sup>71</sup> The *kaifiyat* procedure, he continued, was necessary because it allowed people the opportunity to come before him and state their case in simple terms without the hassle of official procedure. Furthermore, a noticeable feature within his memorial to the authorities, aside from his disdain for the criminal justice system and its ineffectiveness in the interior districts, was his insistence that he simply acted in accordance with the views and conditions of the people of the locality.

Surya Kumar Agasti was another dismissed official who offered an insight into the dilemmas that were faced by the local magistrate.<sup>72</sup> He pointed to the fact that he was placed in a situation where he had to contend with the powerful *zamindari* court, without whose permission many tenants could not place any cases in the colonial court. Tenants who took their cases to the colonial court without the permission of their *zamindar* could face a heavy fine or a potentially more serious punishment. Agasti would cite a case in which a *raiyat* was carried off by the *zamindar* for 'lodging a complaint without his permission and has since not been found.'<sup>73</sup> That the *zamindar* alleged that the *raiyat* was hiding to make the case 'more serious' demonstrated the ways in which individuals could employ the resources of the court for their own gain whilst on the other hand indicating that the court would

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<sup>71</sup> Referring to a case of embezzlement in which he did not recall important witnesses, he argued that he 'had already examined them in detail...why re-incur this expense when I knew that they could add nothing to the evidence already on my record?' See 'C.J. O'Donnell to the Registrar of the High Court at Fort William, Calcutta dated 21 November 1881' in *Ibid*

<sup>72</sup> See 'The Degradation of Mr Agasti to the Grade of Joint Magistrate' in Proceedings of the Lieutenant Governor of Bengal, Judicial Department, April 1903

<sup>73</sup> *Ibid*.

never be able to ‘learn anything definite’ about the real state of affairs amongst the local community.<sup>74</sup>

The memorial of Agasti is also telling in that it illustrates how litigation worked within the local community. In contrast to the image of the ‘litigious Indian’, in reality litigation was desirable because it seems to have been regarded as a process of negotiation which could provide opportunities for bargaining and mediation, a point that had been accepted by certain officials.<sup>75</sup> Arbitration was key in the native form of justice and whilst petty cases could be quickly and easily resolved amongst groups themselves, passing more difficult cases on to the state courts was a way of ‘buying time’, allowing themselves the opportunity to search for an agreeable solution and compromise. Crucially, Agasti pointed out that the high number of acquittals in his court were due to feuding parties finally reaching a compromise which, from their point of view, resolved the dispute. This was in stark contrast with legal procedure which regarded conviction as being a central aspect in any resolution. The sub-divisional officer working alongside Agasti tried to bridge the gap between the two views by stating that in the native context acquittal was the equivalent to a conviction. Thus, the court was treated by the Indian complainants as simply another resource within which they could ‘gain their point substantially at any rate.’<sup>76</sup> That could be by negotiation, bargaining or simply causing their opponent

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<sup>74</sup> Ibid.

<sup>75</sup> Litigation for the authorities had become such a serious concern that in 1910, that it was claimed that colonial rule had ‘destroyed in Indian social life all those courts of arbitration, and all those offices, which had, as one of their functions, the settlement of personal disputes. We have thus driven the people to the pleader and the barrister and the law courts.’ J Ramsay MacDonald in 1910 argued that the litigious Indian was the product of a native system which gave out justice in the manner of arbitration, by which a solution acceptable to *all* parties concerned was sought. See J Ramsay MacDonald, *The Awakening of India* (London: Hodder and Stoughton, 1910), p. 115

<sup>76</sup> See ‘The Degradation of Mr Agasti to the Grade of Joint Magistrate’ in Bengal Proceedings, Judicial Department, April 1903



great inconvenience through the time and costs associated with a visit to the colonial court.

The difficulties faced by the magistrate, thus, arose from the fact that he simply could not treat local grievances within the legal confines of the court because they involved considerations that went beyond adherence to strict law and procedure. Observance of official rules, furthermore, was an impossible task for some magistrates, who were themselves involved in the scandals and controversies within their districts. C. J. O'Donnell himself resided with the estate manager of his district which inevitably placed him at the centre of accusations of an 'illegal alliance' made against him by *ryots* of the district. Norman Warde-Jones, a district magistrate in charge of the Govindapur subdivision found himself in a similar position when he attempted to purchase land from the local *zamindar* of Jharia.<sup>77</sup> Subsequent disagreements resulted in the 'Raja' accusing Warde-Jones of intimidation and harassment as well as theft and provided the necessary number of documents and witnesses to strengthen the case.

The charges were eventually dropped leading the authorities to comment on the forgiving nature of the *zamindar* and the local community. By going to court, the *zamindar*, who had faced considerable pressure from Warde-Jones regarding the purchase, was making the district magistrate aware that he too could harass and threaten until more reasonable requests were made and a compromise reached by both sides. Indeed, the *zamindar* was in a more favourable position as the colonial government did not take kindly to any pecuniary relations between officials and

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<sup>77</sup> See 'Memorial of and Related Papers Mr N Warde-Jones, Late Deputy Magistrate And Deputy Collector in Bengal Appealing Against his Dismissal from the service of the Government in March 1896' in L/PJ/6/506, File 633

members of the native community, a fact evident in the heavy censure that Warde - Jones received from a government official for the 'disgrace' he had caused.

The censure which local magistrates received for not following official procedure indicates the existence of a strained relationship between the upper echelons of the colonial administration and their subordinates in the interior districts. Yet, it was not the deviation from official procedure itself which caused concern amongst the superior authorities but the fact that the deviation had reached the public arena and made the flaws of the official system visible. Indeed, what the memorials of dismissed magistrates have in common is that their dismissal was a result of the difficult relationship they shared with their immediate superiors.

The case of C. J. O'Donnell is particularly worthy of note in this respect. Had he had a better relationship with his district magistrate, it was noted, his faults would have been overlooked. What compounded the tensions which existed between him and other authorities was his downright refusal to admit any wrong doing on his part. Upon being criticised for residing with his estate manager, for instance, he replied that he, like many other magistrates, had no other option. As long as Government refused to 'provide suitable dwellings in this foreign and unhealthy country for its civil and military servants', he argued, the 'former must make arrangements which they would gladly avoid.'<sup>78</sup>

What is particularly interesting about the case O'Donnell is that he contested a number of agendas. He was dismissive of the cumbersome lengthy procedures in place, yet he was not a supporter of the locality of which he was in charge either, stating that it was often the landlord, and not the tenant, who was the oppressed. The

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<sup>78</sup> 'The Humble Petition of C.J. O'Donnell, a Member of the Bengal Civil Service' in The Case of C.J. O'Donnell Appealing Against Dismissal From The Role of Joint Magistrate, L/PJ/6/75, File 985

*kaifiyat* procedure he argued was a necessity in an environment where the local population would employ the courts for all sorts of mischievous purposes. But most glaring was his vehement opposition to the administration of which he was a part. The most striking example of this opposition came in 1876, when he authored a pamphlet by the name of *The Black Pamphlet*. In that document he accused both the viceroy of India and lieutenant governor of Bengal of

prostituting charity, and of knowingly and wilfully misapplying eight and a half million pounds sterling of public money. He accused the Commissioners of winking at this misapplication; he accused the other officers of his own service of misrepresenting the real facts of the case; and he accused the European indigo planters of having “pocketed the loot.”<sup>79</sup>

In the aftermath of that publication, in which he ‘publicly insulted every class of European, official and non-official in Behar’, he was transferred to Eastern Bengal. By 1881, he was once again in trouble due to his clashes with superior officials and dismissed from his post in Jessore. O’Donnell did not let the matter of his dismissal rest easily and, in his customary manner, accused the highest of authorities, the lieutenant governor general of Bengal, for jeopardising his career. Furthermore, upon hearing that his appeal was to be rejected, he wrote to the secretary of state to India ‘demanding’ that a copy of the papers regarding the decision, and the exact reason for his dismissal, be sent to him.

His demand was strongly criticised by the authorities who treated the action as further proof of O’Donnell’s insolence and inability to yield to his superiors. One official concluded that he was a ‘most inefficient and dangerous member of the Bengal Civil Service.’<sup>80</sup> It was his deviant behaviour, rather than his deviation from

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<sup>79</sup> ‘Horace A. Cockerell, Secretary to the Government of Bengal, Judicial, Political and Appointment Departments to the Secretary to the Government of India, Home Department, No. 332J, dated 25 January 1882, Enclosure Number 1’ in The Case of C.J. O’Donnell, L/PJ/6/75, File 985

<sup>80</sup> ‘Letter No. 20, dated 18<sup>th</sup> April 1882’ in Ibid.

official procedure, that was the real source of anxiety amongst the superior authorities. His was the most visible example of an official publicly attacking the might of British authority. He criticised not only the mischievous nature of the local population but, most importantly, he openly contested imperial agendas of British rule itself. It was this challenge from within the colonial network that unsettled the authorities. His demand for the papers regarding his dismissal caused further alarm, for, if O'Donnell's demand for the papers was complied with, noted the secretary to the Government of Bengal, then what was to stop other subordinate officials from making similar demands?<sup>81</sup>

What the memorial of CJ O'Donnell, and the other cases that have been discussed in this section, highlight, is the need for British authority to be made visible to the people. The impression had to be given that the institutions of the colonial state provided impartial justice to all which in turn would legitimise British presence in India. The appeals of dismissed subordinates were damaging because they publicly undermined the image of superiority of British justice and authority in India. They made visible to the Indian, not superiority, but the tensions and contradictions which existed within the colonial administration. The disclosure that the shortcomings of subordinate officials could be overlooked as long as they did not undermine the image of authority was an unwelcome reminder that colonial policy itself aided the adjustment of the legal system. Indeed, the adjustment of policy to meet the requirements of a colony was a central feature of colonial rule. Lack of finance and manpower were some of the reasons behind the reluctance of the British authorities to fully incorporate local forms of law and justice within the official legal structure. The objective of the colonial state was ultimately to preserve order in the

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<sup>81</sup> See Ibid.

interior districts rather than give any serious consideration to the improvement of the ordinary machinery of law.

Recommendations on how the system could be improved were simply a public exercise designed to give the impression to the public that the British ideal was still attainable. In reality, key features of the legal system were designed to ensure that local forms were disrupted as little as possible. The system of appeal, cited as one of the major flaws of the legal system, was preserved on the grounds that the concept of 'finality' was at odds with the views of a population accustomed to various sources of redress. Furthermore, the long-standing debate over whether executive and judicial functions should be placed in the hands of one official always focused around the issue of improving the ordinary machinery of law or the preservation of control. For those supporting a separation of functions, the question hinged on the fact that unification maintained the irregularities and loopholes by which an accused could escape punishment.

The argument put forward by those in support of the status quo, on the other hand, was that the Indian was attached to the idea of despotic rule and one had to maintain a system which was in line with the habits of the people. Most importantly, it was argued, preservation of peace and the visibility of British rule were vital to the continuation of the empire. Separation would result in a further dispersal of authority in an environment in which British impact on local affairs was already so limited. Nothing, it was argued, should be done that weakened the position, influence and authority of the government. As one official concluded in 1868, the district

magistrate ‘need seldom use his judicial powers, but the knowledge that he could, if he so chose, would be everything.’<sup>82</sup>

The wider objectives of the colonial state, then, ensured that the legal structure was designed in a way that could be adapted to meet the needs of the people within the locality, in many cases allowing them to receive justice in their own way. Adapting the system allowed the colonial authorities at least to continue to ‘despotically govern’, be visible to the people, and preserve the moral economy of the locality as well as the all-important peace of the district. Allowing justice to be gained in ways that differed from official procedure proved to be a necessity because the idea of difference between ruler and ruled was the foundation of colonial rule. To have tried to introduce democratic features designed to provide impartial justice to all would expose more sharply the racial inequality embedded within the legal system. Trial by jury was one such feature, which demonstrated why it was more conducive for the state to allow the continuation of a separate system for ruler and ruled respectively, which will be discussed in the following section.

#### 5.4 The Court, Law and Acceptable Distance

It has been truly said that in a country like India, despotically governed, frequent tampering with the law is a sign to the people of fickle temper of the despot.<sup>83</sup>

This was the opinion expressed in an English monthly newspaper, the *St. James’ Gazette*, in London. The topic of discussion was a circular issued by the Lieutenant Governor of Bengal, Sir Charles Elliot, on 20 October 1892 by which Elliot further

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<sup>82</sup> Lord Ulwick Browne, quoted in Ray, Prithwis Chandra, *The Separation of Judicial and Executive Functions in British India: A Compilation of Authoritative Opinions and Statements on Both Sides of the Question, 1783-1900* (Calcutta: City Book Society, 1902), p. 7

<sup>83</sup> ‘Trial by Jury’ in *St James Gazette*, Number 19, 1892. Article included in the ‘Papers Relating to Trial By Jury in Bengal’ in L/PJ/6/334, File 2092

restricted the powers of trial by jury in Bengal. The circular had followed two years of secret correspondence between the governments of India and Bengal relating to the jury system. The view of Elliot, that the system was a complete failure, and his circular that followed, caused a storm of protest from both nationalists and British officials in the colony and metropole alike. Nationalists would defend the system as a ‘bulwark of liberty’, a boon and a privilege that was a central feature of any democratic legal system. Officials referred to the system as a ‘useless exotic’ but also acknowledged the wider implications that any restrictions had, not least of which were the uncomfortable questions that such tampering raised about exactly what was acceptable in a colonial court of law, and crucially, for which group. Two months later in December 1892 the circular was withdrawn and another commission appointed in 1893 to investigate further the role of jury trial in India. As the above statement implies, interfering with law in a colony was a necessity but the manner in which it was to be done had to maintain a delicate balance between the two sides of colonial rule – the practicalities of empire on the one hand and a visibility intended to be synonymous with justice and progress on the other. The system of trial by jury in India was one problematic feature of the legal system which publicly undermined this balance and raised unsettling questions about the presence of native justice in a British court. As the author of the article in the *St. James’s Gazette* would conclude, what was required was a ‘more valid excuse than the statistics provided by Elliot...in order to justify the policy of tinkering.’<sup>84</sup>

Tolerance of local customs and the preservation of the moral economy demonstrated that in India the legal system rested on the idea of difference, of the need to preserve a different system for the colonised and another for the coloniser.

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<sup>84</sup> Ibid.

The problem with a system such as jury trial was that it brought the contradictions and dilemmas of colonial policy into sharper focus. The controversy following the circular of 1892 highlighted the uneasy relationship that existed between the judicial courts of justice and the executive government. Indeed, the article in the *St James's Gazette* had emphasised the need for a better reason to justify the policy of tinkering because the statistics used by Elliott were themselves a source of contention. Elliot cited the Shambazar riot case, which triggered the two-year enquiry and the subsequent circular, as one which demonstrated that the handling of evidence by a native jury was at odds with official procedure. In that particular case, a clash between two religious groups over a plot of land, it was argued that the jury had passed a verdict of not guilty in spite of the 'overwhelming evidence' against the accused.<sup>85</sup> The problem, the authorities stated, was that it was this reasoning by native jurors that was responsible for the low number of convictions and high acquittals which plagued the legal courts. Increased official control, therefore, over the workings of jury trial was considered a necessity.

Yet what had also troubled Elliot and the executive authorities in the Shambazar case was the failure of Judge Rampini, who presided over that case, to pass the matter to the High Court even though he had disagreed with the verdict. The failure of magistrates to pass verdicts over to the High Court for revision was cited as a main reason why the circular was introduced. But Elliot's eagerness to restrict jury trial had little to do with any faith in the High Court. Instead, the decision to restrict jury trial reflected a lack of confidence in the superior courts, which rarely acted in accordance with the wishes of the executive government. During the two-year enquiry which preceded the circular, the majority of district authorities had not

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<sup>85</sup> See 'Papers Relating To Trial By Jury In Bengal' in L/PJ/6/334, File 2092



branded it a complete failure, despite pointing to the numerous shortcomings of the jury system. Most importantly, they noted that the High Court in the majority of cases actually upheld original jury verdicts, in direct opposition to the views of the executive authorities. It was in recognition of this fact that Judge Rampini had decided against passing his case to the High Court.

The commission that was appointed in 1893 to further investigate jury trial, whereby the opinions of various judicial authorities were sought regarding the working of the courts of justice, further revealed an extremely hostile relationship between the judicial and executive sector. Judges of the High Court pointed to the illegal nature of the executive government interfering with the judicial independence of the courts and the executive demand that the High Court act in accordance with the views and needs of the state. The executive authorities responded to such claims by pointing out that judicial courts did not in fact have the same level of independence in India as in England, and that wherever the High Court failed to interfere, it was the duty of the local government to step in and preserve the peace of the district.

The system of trial by jury, then, highlighted the broader practical problems inherent within the legal structure. The colonial authorities were also confronted by the dilemma of trying to justify restricting jury trial on an ideological level. Not only did it highlight racial distinctions but it raised difficult questions about the importance of jury trial in Britain. Tampering with Indian agencies such as the *panchayat*, as discussed elsewhere in this study, produced ineffective results but failure could be attributed to the indigenous nature of the *panchayat* and the peculiarities of the 'native' character. With the jury system, emphasis was placed on

the fact that jury trial was very much a western innovation; a foreign experiment considered to be too advanced for the people of the locality, the peculiarities of whom would severely limit the effectiveness of jury trial in India. At the same time, however, the critical gaze upon the peculiarities of the 'native' mind also rested upon the jury system in the metropole itself. Long regarded as a fundamental right of the British citizen and the backbone of the British legal system, jury trial in Britain was not without its critics, who questioned the suitability of allowing an 'ordinary, little-educated layman' to decide matters of law. Furthermore, as one critic pointed out, with the development of a highly sophisticated legal system over the course of the nineteenth century with a skilled legal workforce, there was no longer the same need for the opinion of the selected few.<sup>86</sup>

Restricting the jury system in Britain always attracted opposition primarily on the grounds that any attempt to limit a system referred to as the 'palladium of justice' was seen as an attack on the sentiments of the British people. The colonial government in India, on the other hand, did not face the same dilemma. Restrictions were a key feature of jury trial in India. Indeed, some officials considered the Indian jury system in a more favourable light than the system in the metropole.<sup>87</sup> The differences between the jury system in the metropole and that of the colony were often startling. In England, jury verdict was unanimous; in India it was a majority vote. In England, the verdict of the jury was final; in India, by a ruling passed in 1872, the verdict of the jury could be set aside by the presiding judge who could refer

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<sup>86</sup> See T D Beighton, 'Trial by Jury In Bengal' in *Calcutta Review* 86:171 (1888: January) and 'Trial By Judge, And Trial By Jury' in *The Westminster and Foreign Quarterly Review* (1872: April)

<sup>87</sup> Sir Alexander Miller, author of a bill in 1895 proposing to cross-examine juries stated that it was rather unfortunate that juries in England had the right to pass a general verdict 'whether it pleases the judge or not'. See 'A Bill to amend the provisions of the Criminal Procedure Code relating to juries' in L/PJ/6/404, File 1554

the case to the High Court. In England, a jury could be used in both criminal and civil cases. In criminal cases, the jury possessed the right to pass a general verdict without explanation, whilst in civil cases, they were required to carefully assess the evidence before explaining their decision to the judge. In India, a jury could be used only in criminal cases but were required to use the civil procedure which was adopted in the courts of England. Although the jury system was extended to a select few districts in Bengal in the years following the withdrawn circular of 1892, the extension was still subject to a number of controls and was carried out in those districts where, as one official noted, certain agrarian disputes were few and where there were more competent judges, as opposed to jurors.<sup>88</sup>

The restricted role of the jury in criminal administration coexisted uneasily with its role as a political tool. Trial by jury in Bengal was only introduced in seven out of forty-six districts, playing an insignificant role in the criminal administration system and treated with similar disdain by the majority of the population. Yet the importance of jury trial was always measured in political terms. For preserving the peace and well-being of the empire, trial by jury was useless to the government. But crucially, as one article noted, it was looked on with ‘pride by a class of people whose idea of progress rests on the imitation of English institutions...they view trial by jury as a trusted safeguard of their lives and property.’<sup>89</sup> Jury trial was a ‘political advantage’ that would ensure that the legal system seemed less ‘foreign’ to the Indian people. It was intended to give the people the impression that they had a say in ‘their administration’ whilst at the same time extolling the virtues of British presence in India. Removal of jury trial in India would endanger the role it played as

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<sup>88</sup> Disputes between tenants were considered to be much simpler than those between landlord and tenant. See ‘Extension of Trial by Jury in Bengal’ in L/PJ/6/445, File 707

<sup>89</sup> ‘Trial By Jury in Bengal’ in *Speaker*, 7, (June 3, 1893), p. 622

a tool justifying British presence in the colony. Indeed, the authorities did succeed in promoting the idea of jury trial to educated members of the native community who went on to demand that jury trial be introduced in all districts. The circular of 1892 was inevitably regarded as an attempt to deny the population ‘bulwark of liberty’ and at a congress meeting held in Allahabad in December 1892, members would describe the circular as a ‘retrograde, reactionary and injurious policy harmful to the best interests of the country.’<sup>90</sup>

Educated members of the native community had long been aware of how the jury system signified racial exclusivity, a point that the colonial government explained with much difficulty. In 1872, racial difference had become even more firmly entrenched in the law when James Fitzjames Stephen declared that the finality associated with jury decisions could never work in a country in which ‘control and supervision by one set of courts over another’<sup>91</sup> was the foundation of colonial law. Finality, thus, was removed and native jury decisions were subject to revision by the High Court. At the same time, following the increasing numbers of Indian officials working within the judicial system, the government had come to the decision that the inequality embedded in the legal system had to become less visible. European members of the community, who up to that point could avoid being subjected to the local courts in the interior, were convinced to surrender their right to call for trial by jury and were as a result now subjected instead to the local courts. In return, however, they were provided the privilege of being tried only by a European magistrate in the interior. Inequality thus was still very much a part of the legal system and it would be an issue that would be keenly felt in 1883 following the

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<sup>90</sup> ‘Resolution of the Congress sitting at Allahabad on 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> December’ in L/PJ/6/338, File 197

<sup>91</sup> *Minutes by the Honourable Sir James Fitzjames Stephen 1869-1872* (Simla, 1898), p. 45

introduction of the controversial Ilbert Bill. Indeed, the significance of the uproar following the circular of 1892 becomes even more apparent when one considers it alongside the Ilbert Bill as both forcefully highlighted the legal distance between the European community and the native population in the interior districts.

The circular issued by Charles Elliot was introduced only eight years after Courtenay Ilbert put forward a proposal which recommended that native district magistrates in the interior districts be given the right to try a European accused. Up until that point, any case involving a European accused which came before native magistrates would have to be transferred to a European magistrate. The trigger to this proposal was the administrative inconvenience involved in these transferrals. Added to this concern, were the reported violent excesses of British planters against their Indian employees, and the legal protection that the former could receive. It was in light of these issues and the need for justice to be seen, a crucial feature of colonial rule in India, that Ilbert had put forward the controversial proposal.

The outcome was violent opposition in both India and the metropole, with members of the British community highlighting the need for legal protection in a colony in which they were outnumbered and vulnerable. Racial distinction in the law, whereby they were to be tried by members of their own race, was a necessity. The opposition only abated once the proposal was largely modified. One significant modification was the 'compromise' by which native magistrates were permitted to try Anglo-Indians but crucially, the latter could once again demand trial by jury, half of whose members had to be British or American. It was, as the Lieutenant Governor of Bengal would describe, a revolutionary enactment by which jury trial, formerly a

feature of both Sessions and High Courts, would be introduced into the magistrate court for the first time – but only for a select group.

The Legislative Council meeting which preceded the modified bill of 1884 included an in-depth discussion of racial distinction in the legal system.<sup>92</sup> Ilbert himself stated that the objective had never been to introduce racial equality. The bill was only intended to include a very small number of Indian district magistrates, with the local government having complete control over the recruitment process. Crucially, he added, he had never proposed ‘the abolition of racial distinctions for judicial purposes...these would affect the privileges the European community enjoyed and which we would never take away.’<sup>93</sup> The idea had been simply to remove race as a sole factor in disqualifying an Indian candidate. Trial by jury, as ineffectual and undesirable as it was, even in the metropole, was still a necessary institution for the European community in India, who by their very difference required their own law. Fellow council member Kristodas Pal stated that it was admirable that an English accused was given the option of seeking trial by jury instantly, a right not even available in many cases in the metropole, but he only wished ‘that it was a right that could also have extended to my fellow countrymen...with a jury full of Englishmen, will justice be received?’<sup>94</sup>

What troubled Pal in particular was the fact that the modified bill of 1884 had not been issued to the local government for fuller consideration. What instead had occurred was private correspondence between the government of India and members

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<sup>92</sup> See ‘Criminal Procedure Code, 1882, Amendment Bill’ in *Abstract of the Proceedings of the Council of the Governor General of India Assembled for the Purposes of Making Laws and Regulations, 4<sup>th</sup> and 7<sup>th</sup> January 1884*

<sup>93</sup> *Abstract of the Proceedings held on 4th January 1884*, p. 4

<sup>94</sup> *Ibid*, p.30. Furthermore, Pal added, the administrative inconveniences would remain intact with European jury trials being few and far between.

of the European community prior to the modification that would ensure immediate jury trial for a European accused when faced with an Indian magistrate. It excluded the involvement of Indian opinion. It was, as the Lieutenant Governor of Bengal noted, an extraordinary provision for extraordinary circumstances. The circular of 1892 was formed in similar conditions. It involved a secret two-year enquiry between government officials and again excluded popular Indian opinion.

The crucial difference between the two-year enquiry and modified bill, however, was that the enquiry was formed with the intention of restricting jury trial for the Indian accused. It was, in a sense, ordinary restrictions for ordinary times. When the rights of a minority ruling group were endangered, then the law was modified accordingly and jury trial safeguarded their rights. When the rights of the Indian majority were highlighted by nationalists, and the role of trial by jury in safeguarding these rights, the government pointed to the failings of the ordinary system of law as a whole and the unsuitability of jury trial in ordinary law courts. Trial by jury for the European was a much valued and necessary privilege in a foreign locale, a system that would protect vulnerable Europeans from the flawed ordinary machinery of law. To receive justice, it was argued in 1883, the European had to turn to people of their own race who would share the same level of understanding.

Eight years later, the Europeans reversed this argument by stating that the Indian accused could not receive the same level of consideration from his own peers because caste, communal or other personal enmity would always surface and lead to a miscarriage of justice. Trial by jury for the Indian, it was argued, would always be ineffective as it was incompatible with native habits and customs and only

contributed to the numerous flaws in ordinary law courts. The complete removal of this 'boon' was out of the question due to political considerations. What was necessary instead was to introduce safeguards which would provide the executive with more control over native jury verdicts. It may have been acceptable for the Indian to provide justice according to his own views within his own local environment, but within the official arena of a court, which emphasised the importance of conviction as well as jury trial as the right of the privileged few, the opportunities to provide justice in the British court would always be limited.

## **5.5 Conclusion**

The colonial court of law was one arena which justified British presence in India. It was the arena that was intended to signify the supremacy of British law, order and justice. The colonial government was able to make British presence visible to the local population through the courts of law. But on a practical level, that same arena would also make visible the contradictions and dilemmas of colonial rule. The limitations of colonial policy, which placed emphasise upon preservation rather than radical change, meant that this was an arena within which judicial authorities were always unsure of how far to interfere in particularly sensitive matters. This was particularly a problem when marital disputes amongst the Muslim community made their way into the British court. Without a registered document as proof of marriage, these disputes were difficult for the presiding magistrate to successfully resolve. The government had tried to alleviate the problem through the introduction of certain legislation, by which it had attempted to convince members of the Muslim community to voluntarily register their marriages. It was an attempt that met with



limited success.<sup>95</sup> Marital legislation aside, when local magistrates personally handled local disputes of various kinds, they had to ensure that the resources of the court were adapted to meet the requirements of the locality. The instruction of their superiors was simply that any modifications be made quietly and without scandal, as the memorials of dismissed magistrates indicated. The personal strain of trying to maintain the public image of colonial authority whilst meeting the demands of the locality were also visible in the memorials that were presented to the court.

Adapting official procedure would be beset by a number of problems. One officiating judge in 1891 ruefully noted that ‘evidence is recorded as if the deputy magistrate was a sort of typewriter worked by the witness.’<sup>96</sup> Indeed, a magistrate had to act in such a manner because, in the Indian environment, justice involved more than a simple conviction of the accused. Justice for the Indian could mean a number of things – negotiation, compromise or causing great inconvenience to an opponent. Governmental courts, Marc Galanter has maintained, can act as a weapon by which dominant groups in the locality can intimidate and harass their opponents. Yet at the same time they could be employed by the ‘local underdogs who could now carry the fight outside the local arena by enlisting powerful allies elsewhere.’<sup>97</sup> Yet again, the court could act as an ‘additional option’ open to the villagers whereby bad cases, in which either side simply could not arrive at a compromise, were buried in the state courts. The court, as a result, had to be adapted to accommodate a wide of range of

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<sup>95</sup> The contentious issues surrounding the act have been discussed in Chapter two of this study. What prevented the authorities from making the act a compulsory, as opposed to an optional, measure was the potential offence the act would cause. What compounded the problem further was the influential role of local agents in Islamic ceremonies who would openly resist, with the support of the local community, the efforts of the district authorities to marginalise their influence. For further details relating to the issue of Islamic marriages and the problems associated with their registration see ‘Offences against Marriage in Eastern Bengal’ in Bengal Judicial Proceedings for March 1873 and ‘Registration of Mahomedan Marriages and Divorces’ in Bengal Judicial Proceedings for July 1883

<sup>96</sup> See Appendix I of *Police (Beames) Committee Report* (1891), p. lxxxiv

<sup>97</sup> Marc Galanter. *Law and Society in Modern India* (Oxford: Oxford University Press, 1989), p. 26

behaviours, acting less as a site of dispute resolution, in which outright victory was key, and more as a forum in which people could quarrel, bargain and negotiate.

As adaptive as the colonial court of law was to conditions of the locality, one can also recognise the points where the colonial government drew a line and refused to adapt any further. It was acceptable for the Indian to employ the resources of the court, particularly when the end result involved both parties eventually settling their dispute privately within the confines of their village. At least then the verdict took place outside the British court. Any variations were explained away by the authorities by an emphasis upon the ‘peculiarities’ of the people and their forms of local justice. The image that the authorities had wished to portray of the British court was at least protected. But to allow the Indian to provide justice within the British court was an entirely different matter, as the controversial subject of jury trial clearly demonstrated.

For native forms of justice to coexist with the ‘superior’ justice of the colonial authorities, and that too within the official legitimate arena of the colonial court of justice, would create a number of difficulties. Firstly, as demonstrated in the initial section of this chapter, coexistence within the official arena involved recognition of different norms and values of Indian jurors which were at odds with the colonial model of justice. But above all, the placement of the native juror within the colonial court publicly undermined the image of supremacy. To have an Indian juror sitting in a colonial court setting aside official procedure was too visible a public reminder of how limited the supremacy and legitimacy of the British court actually was.

Equally important, trial by jury turned public attention to the distance between the Indian population and members of the European community. In other words, the jury system heightened awareness of racial distinctions ingrained within the colonial system, which served as a glaring example of the difference that was embedded in a legal structure which in theory was designed to promote equality. This in turn directed the public gaze, particularly the gaze of the nationalist, to the wider problems of the court system such as the uneasy relationship between the superior courts and the executive government.<sup>98</sup> In particular, the jury issue once again highlighted the judicial-executive debate, a debate which raised uncomfortable issues such as the prevalence of despotic rule and the uneasy coexistence of both colonial and democratic law in British India. These were issues and uncomfortable questions that the jury system raised and the only way to respond to the jury issue was to ensure that it remained a limited feature in the colony.

The British courts of justice, then, revealed a number of contradictions and dilemmas of colonial rule in India. The most important role of the colonial courts of law was to maintain an image of superiority in spite of the difficult questions they posed about the nature of British rule in the colony. The fractures and inconsistencies which existed within the system allowed those employing the courts to easily subvert the law of the court and assert themselves in various ways. Laxmi Telinee, mentioned at the beginning of the chapter, employed the court once the dispute arose. Once the dispute had been settled privately, she was content to discard that same

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<sup>98</sup> Manmohan Ghose, a leading barrister and member of the Indian National Congress, was particularly vocal throughout the judicial-executive debate 'If we are fit to have justice administered in Bengal according to that high ideal of impartiality and fairness which prevails in England', he argued, 'then do not give us the shadow and take away the substance...if the English model is unsuited to the country, better abolish all Courts of Justice and revert to the old Oriental and patriarchal system'. See Prithwis Chandra Ray, *The Separation of Judicial and Executive Functions in British India: A Compilation of Authoritative Opinions and Statements on Both Sides of the Question, 1783-1900* (Calcutta: City Book Society, 1902) p. 9

court. Jury members, when they were employed, would adapt the jury system of the court so that it resembled the decision making process to which they were accustomed. Furthermore, the challenges that the authorities would receive from within the colonial network, in the form of memorials from dismissed officials and similar cases, would further fracture the imperial agenda. As a result, for local agencies, the court would act as another flexible forum which they could employ in ways which suited their own needs and circumstances.



## Chapter Six: Conclusion

The objective of this study has been to analyse the various forces and influences that shaped the working of the system of criminal administration in Bengal. This was a system designed to enable information to flow seamlessly from one agency to the next until a dispute was resolved and 'justice delivered'. It was a network of control that did not simply settle for control over official agencies in the form of the police and the courts of law. It penetrated deeply into the rural interior and required the *chowkidar* as the key link which connected the distant rural population to the colonial state. The visibility of British rule was thus ensured in this process of connecting informal networks within village society with the formal legal network of control.

British rule in India had a profound impact upon Indian society on a political, social and economic level, and it was the colonial law introduced by the British that played a crucial role in reshaping the social order of Indian society. As Rajeev Dhavan has argued, the 'single achievement of the Raj was to bring the entire social and political economy within the shadow of its law and legal institutions.'<sup>1</sup> Colonial law was at the core of several transformations: the empirical investigative techniques, which transformed communities into 'criminal tribes' thereby bringing them under the legal gaze; the economic policies which altered land relations and brought disputes within the legal arena; and the construction of legal and social identities. Equally important was the ideological significance of the law, central to the civilising mission in India which justified British presence in India. The colonial policeman, the court of law, the magistrate – these were all the markers of the

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<sup>1</sup> Rajeev Dhavan. 'Introduction' in Marc Galanter. *Law and Society in Modern India* (Oxford: Oxford University Press, 1989), p. xvii

colonial state, markers that were designed to emphasise the authority of British power.

It was in the province of Bengal that these markers of the state were particularly influenced by systems of informal control at the village level. In the rural districts of other Indian provinces, the colonial state could rely on a number of indigenous agencies to provide information, particularly relating to criminal cases. Such agencies, it was felt by the authorities, were not available in Bengal. With lack of an efficient agency through which to maintain contact with village society below the district level, the government of Bengal sought to transform traditional institutions and clothe them in a language of what they considered 'local self government.' Thus, it was in Bengal that an institution like the *chowkidari panchayat* was created for the first time by the British government for purely executive purposes. The aim was really to ensure that by remunerating the *chowkidar* village society would feel that they had a voice, a type of self governance.

The system in reality may have been designed to ensure the passing of criminal information from *chowkidar* to police but the promotion of the idea of local self-government, and the subsequent connection with colonial law, had a significant impact in Bengal. The concept of local governance was closely linked to the ideal of the responsible, moral Indian following the rule of law, which was crucial in the formation of identity in Bengal. Anindita Mukhopadhyay, for instance, has argued that the Bengali *bhadralok* constructed a distinct social identity through the selective use of western legal discourse, one in which the emphasis upon the *bhadralok* as 'the good legal subject' was key in maintaining the separation between them and the

*chotolok*.<sup>2</sup> The use of colonial law in creating a distinct identity which centred around the idea of a law abiding population capable of self government meant that it was in Bengal that demands for constitutional reforms became particularly pronounced. This in turn was connected with a brand of provincial nationalism considered by the British to be particularly troublesome.<sup>3</sup>

The might of British power was also effectively undermined on a subtler, yet equally significant, level by lesser known ordinary, mundane cases in Bengal which ensured that the institutions of the state functioned in ways that were more conducive to the needs of local society. They demonstrate the ways in which official institutions had to cooperate with more informal methods of control below the district level. Such a relationship would bring into sharper focus the often fragile nature of the relationship between state and local society, a fragile relationship more visible in Bengal than in other Indian provinces. The markers of the colonial state, thus, may have enhanced the visibility of British power to the local population, but they also emphasised how fractured this power was. The system of criminal administration in Bengal was the site where the fissures in colonial policy, the contests and the distortion of state institutions would be highlighted continuously throughout the colonial period. It was also the site which made visible the complexities of the interaction between state and local society.

The network of control in Bengal transcended rigid binaries of power in which coloniser and colonised were pitted against each other, the latter subjected to the all-powerful Orientalist gaze of the former. Rather, the network acted as an arena

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<sup>2</sup> Anindita Mukhopadhyay. *Behind the Mask: The Cultural Definition of the Legal Subject in Colonial Bengal (1715-1911)*, (Oxford: Oxford University Press, 2006).

<sup>3</sup> In comparison, Madras 'remained quiescent during the first two decades of the twentieth century.' See Sugata Bose and Ayesha Jalal. *Modern South Asia: History, Culture and Political Economy* (London: Routledge, 1998), p. 130



within which local agency could not only undermine imperial agendas but employ the system in ways that allowed them to, in a sense, establish their presence within the colonial network of control and set their own terms and conditions. And it was not only people of the locality that asserted themselves within the framework of the state. Officials employed by the colonial state- the policeman, the magistrate- would also publicly undermine the might of British power by operating legal institutions in ways that suited the conditions of the locality under their control. Thus, not only was the rhetoric of empire undermined from outside the network of control by local agencies, but also challenged from within.

Subverting over-arching imperial agendas was made possible by the inconsistencies of colonial policy. The rhetoric of empire, and the civilising mission in India, was undermined by the practicalities of colonial rule, in which the cost of running the colonial administration and the desire to maintain a policy of non-interference in matters not directly threatening to the colonial state were key components. These priorities were particularly visible in the working of various committees set up to address the failings of the system of criminal administration. For instance, the committee led by John Beames in 1890, which went on to publish its findings in 1891, was the first major investigation into the workings of the system of criminal administration since 1838. That it would be as limited in scope as previous reports is evident in the papers of the committee meeting held on 8 December 1890, when committee member Raja Peary Mohun Mukherjee expressed a desire to examine ‘witnesses from all ranks of the community, including *chowkidari panchayats*, to find out what they have to say.’<sup>4</sup> Beames’ response, in contrast, emphasised the practical difficulties of expense and of selecting those whose

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<sup>4</sup> ‘Appendix IV’ in *Police (Beames) Committee Report* (1891), p. xxxv

opinions were of enough value to justify the time the government invested in examining these witnesses. As a result, it was the leading public associations and private individuals who would be consulted. The main aim was to try to ensure that criminal information was gained from local agencies and the affairs of the interior became known to the colonial authorities. Trying to actually address the needs of the locality, and aid the process of local self-governance, was not a priority.

The practical concerns of empire ensured that colonial rule was defined by fears that the administration did not 'know' the people of the colony. This would further fuel stereotypes about the local population, carefully constructed images about the population which were designed to justify foreign rule in India. But, as chapter two of this study has tried to demonstrate, whilst colonial constructions could exaggerate racial stereotypes and subjugate Indian agency to the 'colonial gaze' they still could provide an insight into the everyday realities of that agency. The vast array of cases in the police administration reports focused upon the violence, immorality, adultery which 'prevailed' amongst the local populace, which in turn strengthened colonial constructions about the local populace. But upon a closer reading of these cases, and looking beneath the constructions, one can still view everyday 'ground realities' that simply cannot be dismissed as part of a hegemonic colonial discourse. Honour, reputation, economic survival in the form of the *panha* system, women striking a blow to patriarchal authority- these were just some of the concerns at the centre of all criminal cases that made their way into the police administration reports. Whilst they fuelled the colonial stereotype, they nonetheless provide an insight into real, non-political concerns of the people which were not directly concerned with any broader, imperial agendas. Neither can the construction of the *Dhatura* thug be easily

dismissed because, again, if the construction is peeled away then one can note the anxieties of the colonial rulers themselves. Having no control over the production of certain poisons, the only thing they could do was to, once again, fall back on stereotypes that would conceal their panic about the limitations of colonial rule.

The handling of criminal groups, whose presence suggested the existence of an alternative to the sole authority of the colonial state, required more than the creation of stereotypes. The colonial state introduced special legal measures to repress these threats and employed both police and the law courts to enforce them. Yet, at the same time, when 'ordinary' crime and 'everyday' forms of conflict arose, one notices that the British system was flexible, allowing indigenous forms of authority to exist.

The inconsistencies inherent within colonial policy effectively created a flexible system of criminal administration which would allow local society to adapt the system according to different circumstances. Indeed, the manner in which each agency worked highlights a number of rural responses ranging from outright rejection to accommodation. Rejection was apparent in the case of the *chowkidar* and the rural agencies, which were reorganised in a way that aided the information-gathering process following the introduction of Act (VI) of 1870. It was a change that made visible the differences in perceptions concerning law, authority and power. For rural elites to serve on a *panchayat* only to ensure the regular payment of a *chowkidar*, without any real form of power formally given by the colonial state, ran counter to their expectations. The *chowkidar* was customarily part of a powerful rural network in which his sole responsibility was to serve the various needs and demands of the local elites. These rural elites were not opposed to British rule and indeed they

wished for some form of official recognition within the colonial network which would provide them with a role of responsibility and power. But to serve on an agency simply to ensure the smooth passing of criminal information and the remuneration of the local *chowkidar* in a sense created the impression that the powerful elite now simply existed to serve the needs of their *chowkidars*. For the landlord, this reversal in the traditional master-servant relationship, which existed between *chowkidar* and landlord, had the potential to impact negatively upon the way in which rural society perceived their rural masters.

Local elites were willing to serve on the *panchayat*, and thereby work under the colonial state, but they wanted adequate recognition that would preserve their power and authority over their village. They wanted to be known as local magistrates, not merely collectors of the salary of the *chowkidar*. Similarly, those who acted as jury members within the British court did attempt to work according to the regulations of the court but, as was discussed in the fourth chapter of this study, the requirements of the jury system were, in comparison to local forums of decision-making, far more restrictive and rigid in their scope.

The tussle between local elites and the colonial administration over the information-gathering process and their conflicting visions of power and authority had a direct impact upon the official network of control. The *chowkidar*, as a direct result of the reluctance to bring him within the official machinery of colonial policing and control, remained firmly tied to the rural control network and attempts to make both *panchayat* and the *chowkidar* carry out the work of the state were limited. This had implications for both the police and the colonial courts of law, eliciting another form of response. Whilst local elites rejected legislation designed to

maintain them as ‘errand boys’ of the colonial state, they, and indeed the rural population, still made use of the agencies of the state, albeit in ways that suited their own needs and demands.

Whilst it was true that the *thana* police were often an unpopular agency, the fact also remains that they were still a visible force within rural society and had to change the rules and regulations of the state to meet local circumstances. The colonial policeman could be a force of terror but even he knew the limits of his power, aware that his ability to gather information from local society depended upon preserving a certain relationship with that society. At the same time it can be argued that his decision to re-adapt legal procedure was his way of asserting himself within the network of control. In this network, he was poorly regarded and poorly paid, forever stereotyped as barbaric and corrupt. David Bayley has argued that corruption provides low placed officials with a level of power.<sup>5</sup> One can apply this argument to acts that extend beyond traditional definitions of corruption. Thus, by adapting the official procedure to local requirements- dismissing certain cases, altering ‘facts’ so local agents could maintain their anonymity- the colonial policeman could, in a sense, display a form of power and authority. In a system in which he was excluded from power, adapting the system was his attempt at having a stake in the system and prevent being completely alienated from a system in which he was often frustrated. Of course he had to be careful not to completely alienate the local community in the process, but the knowledge that he had the power to subvert official procedure and use that power against the local community if required, was everything.

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<sup>5</sup> See David H. Bayley, ‘The Effects of Corruption on a Developing Nation’ in *Political Research Quarterly*, volume 19, number 4, (December 1966) pp. 719-732

The courts of law would find themselves in the similar position of having to adapt procedure to local requirements. As an examination of the memorials of dismissed officials has shown, officials of these courts, like the colonial policeman, were essentially caught between the demands of two systems. The realities of village life and local perceptions concerning justice meant that the courts had to adapt the official procedure of the state to meet the demands of local society. The local judge worked in an environment within which the British court, although the symbol of colonial supremacy on an ideological level, was, on a practical level, one forum amongst many in the eyes of the local system, one in which opponents could quarrel and negotiate in equal measure. That many officials would ignore official procedure and even publicly criticise the network of control was further evidence that the rhetoric of empire was contested by a number of groups.

It was not the existence of a flexible network of control which troubled the colonial authorities but its visibility. The appeals of dismissed officials, the conflict between the police and the courts of law, between the courts of law and the executive government and the power struggles existing amongst officials, ensured conflicts which were played out in the public eye. This placed the colonial government in a position whereby they had to acknowledge publicly the limits of both their authority and the ideology upon which British rule rested.

The various forces which shaped the working of the system of criminal administration – the limitations of colonial policy, the conflict of interests between rural networks and the agencies of the state, the rejection of the system in some instances, the manipulation of it to meet personal agendas in others and the reworking of the system by both officials and members of rural society –

demonstrate the flexibility of the system. It was a flexibility which provided local society with a space within which their views could be aired and their identity asserted. Justice for the local community was far more than that envisioned within the law codes of the state, with their emphasis upon evidence, conviction of the 'accused' and punishment.

For local society, the agencies of the state, particularly the court of law, were sites where the grievances which defined personal relationships within everyday local society could be further played out. That the *chowkidar* aided this process was a given as he was closely entwined with rural society. The police and the magistrate also had to adjust their official conduct to meet local demands. This was a recognition on their part that the conflicts and grievances which defined relationships within village society required the agencies to work in ways which reflected local perceptions of justice and dispute resolution.

Attempts to develop local self government in Bengal during the period under review in this thesis were ultimately shaped by imperial motives to create agencies that would simply aid police work. The establishment of local self governance was never the primary concern. Yet, as this thesis has demonstrated, the local populace could still in a sense establish their own form of local self governance, employing the agencies of the state in ways more conducive to the moral economy of the locality. It was local society who demanded that the magistrate and the policeman readapt the court and *thana* respectively so as to provide the community with their own forms of justice. It was only after 1914, a year which marks the point where this study ends, that the dynamics of local self governance, and indeed colonial rule, changed. The year 1914 marks an appropriate end point for this thesis because the administrative

changes introduced by the colonial state had the potential to impact the relationship between indigenous agencies and official institutions in ways which differed markedly from earlier periods. The colonial state devolved more powers to local agencies which had previously supplemented official legal institutions. The placement of such agencies on an official footing with a permanent stake in the official apparatus, at a time when both rural and urban sensibilities combined to form mass nationalism against colonial rule, inevitably affected how legal institutions responded to the changed circumstances in the later period of the British Raj. These themes can be more effectively addressed as part of a separate study.

The impact of colonial rule is evident in postcolonial India, which has inherited the machinery of control, and the dilemmas that have shaped it, from the colonial era. Communities considered to be a threat to the authority of the state continue to be targeted by this machinery, in particular those now known as the denotified tribes. At the same time, communities also feel that the Indian constitution favours ‘the backward, poor and displaced at the expense of the majority community.’<sup>6</sup> In this, the postcolonial state has inherited the dilemma of trying to balance the needs of the democratic state with the conflicting demands of individual communities. It is the problem of trying to create a secular state, of trying to keep the ‘secular from the sacred’ as one scholar has described it, when religion, law and politics within Indian society are closely entwined.<sup>7</sup> Like their colonial predecessors, scholars have argued, the transformation of a ‘religious’ concern into a secular one, thereby allowing the court to intervene involves a research process which redefines

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<sup>6</sup> Robert D Baird, ‘Religion and Law in India: Adjusting to the Sacred in Secular’ in *Religion and Law in Independent India* (New Delhi: Manohar Publishers and Distributors, 2005), p. 34

<sup>7</sup> See V.S. Rekhi, ‘Religion, Politics and Law in Contemporary India: Judicial Doctrine in Critical Perspective’ in Robert Baird. *Religion and Law in Independent India* pp. 247-282



religion and the rights of the religious community.<sup>8</sup> Thus, the law has continued the process of redefining the ‘private sphere’ in a way that allows legal intervention. The law of the modern Indian state departs from traditional Indian thought. It is a departure, as scholar Robert Moog has suggested, which has a negative impact upon the Indian judge, who faces both isolation as a result of state attempts to weaken traditional kinship ties and also resistance from local level officials who resist change which affects their own interests.<sup>9</sup>

The manner in which the postcolonial Indian state operates, then, would suggest that there is the existence of a ‘democratic deficit’ within the country. Yet one can argue that when one speaks of a ‘democratic deficit’ one is subscribing to Western requirements of a modern nation state. In practice, as Akhil Gupta has noted, the ‘rigid categories of “state” and “civil society” are descriptively inadequate as terms for the lived realities that they purport to represent.’<sup>10</sup> In a similar vein, anthropologist Anastasia Norton-Piliavsky has maintained that the ‘State’ and society cannot be considered in isolation from each other.<sup>11</sup>

The Indian state, and the agencies which represent this state, is one within which officials can manipulate those who make use of state agencies. But, Gupta has added, the people can also attack and ‘use the hierarchical nature of state institutions for their own ends...seizing on the fissures and ruptures, the contradictions in the

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<sup>8</sup> See Robert D Baird, *Religion and Law in Independent India* (New Delhi: Manohar Publishers and Distributors, 2005) and Ishita Banerjee Dube, *Religion, Law and Power* (London: Anthem South Asian Studies, 2007)

<sup>9</sup> See Robert Moog, ‘Delays in the Indian Courts: Why the Judges Don’t Take Control’ in *The Justice System Journal*, 16, (1992-1994)

<sup>10</sup> Akhil Gupta, ‘Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State’, p. 221

<sup>11</sup> Norton-Piliavsky has examined the ways in which the divisions of the state penetrate deep enough to change the social structures of a community. She examines the ‘mutually beneficial exchange of favours, resources and information’ which result from the special relationship between the police and members of the potentially threatening Kanjar community. See Anastasia Norton-Piliavsky, ‘Borders Without Borderlands: On The Social Reproduction of State Demarcation in Western India’ *British Association for South Asian Studies* (2009), Conference held at the University of Edinburgh

policies, programs, institutions and discourses of the “State” allows people to create possibilities for political action and activism.<sup>12</sup> Of course just who this activism and these development programmes are intended to benefit is itself open to question.<sup>13</sup> The institutions of the state, thus, can be employed by powerful groups within society to oppress others but at the same time the hierarchical structure of the state is dynamic and flexible enough to provide an arena within which the aggrieved can still respond and assert themselves.

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<sup>12</sup> Akhil Gupta, ‘Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State’ p. 231

<sup>13</sup> The dangers of activism and rights groups have also been highlighted, with anthropologist Alpa Shah critiquing the ‘well meaning development programmes which end up maintaining a class system that further marginalises the poor’, a point reiterated by Amita Baviskar and Nandini Sundar. They have argued that ‘welfare programmes actually serve as forms of “welfare colonialism” which tie peasants closer into a dependent market economy’. See Alpa Shah, ‘The Dark Side of Indigeneity?: Indigenous People, Rights and Development in India’ in *History Compass* 5/6 (2007), pp. 1806-1832 and Amita Baviskar and Nandini Sundar, ‘Democracy versus Economic Transformation?’ in *Economic & Political Weekly* (November, 2008), p. 88

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